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Situation and Documents
1956

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INTERNATIONAL LAW
SITUATION AND DOCUMENTS
1956

SITUATION, DOCUMENTS AND COMMENTARY
on
RECENT DEVELOPMENTS IN
THE INTERNATIONAL LAW OF THE SEA

by
Brunson MacChesney



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FOREWORD

A major purpose in the compilation of the materials in this volume has been to provide a collection of treaties, laws and other materials dealing with recent developments in the international law of the sea, and air law developments related thereto, which might be of value to the officers and other personnel of the U.S. Navy. It is hoped that officials in other departments of the U.S. Government, and in other governments, as well as teachers and students of international law, may also find it useful.

An International Law Situation, drawn from a problem used in the curriculum of the Naval War College, was included in this volume in the hope that it would serve to encourage later writers in this Blue Book Series to revive the custom that was inaugurated so many years ago by the late Professor George Grafton Wilson. The present writer is deeply indebted to Professors Jessup, Lissitzyn, Tucker, Gross, Baxter, Briggs, and McDougal for helpful comments on the Situation in draft form, but these gentlemen are not to be held responsible for the final conclusions therein. The Situation, with minor revision, has been published also in 52 Northwestern University Law Review 320 (1957).

The volume was essentially completed in the summer of 1956. So far as possible, information on developments throughout the volume was checked through October 1956, before the completed volume was delivered to the Naval War College in December 1956. On receipt of the galley proofs in August 1957, every effort was made to bring treaty information up to date through search of Treaties in Force (State Department Publication No. 6427), the Bulletin of the Department of State, and British Government lists. It was not possible to make a similar revision with respect to Treaties not in the above lists, nor with the national claims in Part II, Section VI, nor with statutory or administrative changes affecting the laws cited in Part III.

The writer is grateful to many institutions and people for assistance in the preparation and collection of material. His greatest debt is to L. Anthony Zega, Esq., of the New York Bar, who served as an assistant during his tour of duty at the Naval War College. Many other individuals at that institution, too

numerous to mention here, were most helpful. Similarly, the libraries of Brown University and Yale University School of Law were courteous and helpful on numerous occasions. Oscar Schachter, and Chafic Malek, as well as other members of the Legal Division of the United Nations Secretariat, were most generous in making materials available, and assisting in other ways. Officials of the Pan American Union were similarly helpful. The Department of State's Office of Legal Adviser as well as other offices of that and other departments were of great assistance. Willard Cowles, then Deputy Legal Adviser, was a most gracious guide in this aspect of the work. Arnold W. Knauth, Esq., of the New York Bar, was of great assistance in the preparation of Section VII of Part II. Commander Mitchell P. Strohl, U.S.N., of the Naval War College, was most helpful throughout the preparation of the book. The assistance of Miss Elaine Teigler of the Northwestern University Law School Library staff with documents, and Mrs. Angela Henzler, my secretary, with typing and proofreading, is gratefully acknowledged.

BRUNSON MACCHESNEY

Northwestern University School of Law,
Chicago, Illinois,
October 26, 1957.

PREFACE

The publication of this series was inaugurated by the Naval War College in 1894. This is the fifty-first volume in the series, as numbered for index purposes. The titles vary slightly from year to year. The preceding volume is entitled *International Law Studies 1955, The Law of War and Neutrality at Sea*, by Professor Robert W. Tucker.

The post-World War II period has been one of decidedly increased interest in that portion of International Law dealing with jurisdiction and sovereignty over water areas of the world. Exploitation of offshore mineral resources; increased international competition in the fishing industry; and the enormously destructive potential of new weapons systems have prompted many of the coastal and maritime states to review their policies with respect to the territorial sea, the high seas, the continental shelf and superjacent air spaces. This volume on the International Law of the Sea is particularly directed to recent developments in these categories of interest. It was edited by Professor Brunson MacChesney of the Northwestern University School of Law, the 1955-56 occupant of the Naval War College Chair of International Law.

The opinions expressed in this volume are not necessarily those of the U.S. Navy or of the Naval War College.

THOMAS H. ROBBINS, JR.,
Rear Admiral, U. S. Navy,
President, Naval War College.

Newport, 1 January 1957.

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PART I

INTERNATIONAL LAW SITUATION

PART I

INTERNATIONAL LAW SITUATION

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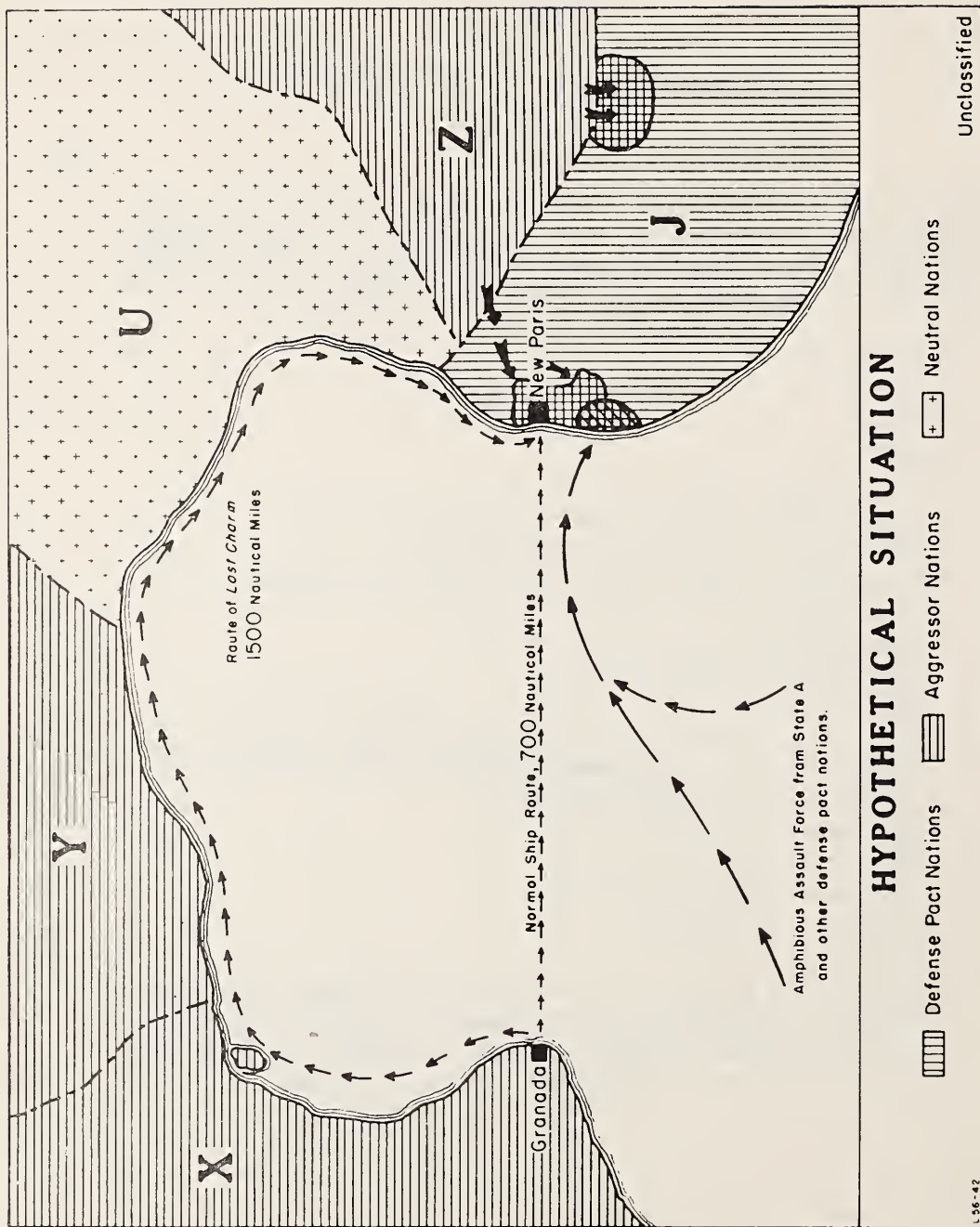


Figure 1.

Situation I. Neutral Duties, the Passage of Belligerent Warships in Neutral Territorial Waters, and the Right of Belligerents to Use Force to Remedy Violation of Neutrality.

The following hypothetical International Law Situation was presented to the students of the Naval War College as a part of one of their Operational Problems. See figure 1 for illustration of the Situation.

THE SITUATION

State A and thirteen other states are members of the United Nations and of a Defense Pact organized under Article 51 of the Charter. States X, Y and Z, also members of the United Nations, commenced without warning an armed attack on a member of the Defense Pact. In the Security Council, the Defense Pact States thereupon charged States X, Y and Z with aggression, but X, a permanent member thereof, "vetoed" the resolution condemning X, Y and Z as aggressors and calling for sanctions. The General Assembly was then convened under the Uniting For Peace Resolution and passed, with a two-thirds majority, a resolution condemning the aggression and calling upon United Nations members for voluntary assistance to the victims of the aggression. State U, although a member of the United Nations, announced that she would maintain a position of neutrality. Despite the General Assembly resolution, X, Y and Z launched a major offensive. Fighting had been in progress for some months and nuclear weapons had been used, for tactical purposes, on both sides.

J, a member State of the Defense Pact, had been occupied by X, Y and Z in its northwest and northeast regions. The Defense Pact States commenced an amphibious attack on the northwest coast of J. X had assembled, in its port of Granada, some 700 miles from J, special weapons personnel and equipment for use in the northwestern part of J. The personnel and equipment were embarked on the "Lost Charm" for New Paris, a northwestern J port now in the hands of X. New Paris is near the area of amphibious operations, and one of the objectives of the operations. Instead of taking the usual and most direct route, X directed the commander of the "Lost Charm," an auxiliary of X flying X's service flag, to proceed through the X-coalition territorial waters

and thence through U's territorial waters, to arrive at J's border at nightfall, and thence to New Paris under cover of darkness. This route was eight hundred miles longer than the direct route from X's port of Granada to New Paris in J. The estimated time required for the "Lost Charm" to traverse U's territorial waters was 50 hours, in addition to the time required to transit the X coalition's territorial waters. The excess time over the direct route may be estimated at 80 hours.

The mission and location of the "Lost Charm" were discovered by the Defense Pact's intelligence just after that ship had entered the territorial waters of U. A's ambassador to U, on behalf of the Defense Pact, immediately informed U's Foreign Office of these facts and demanded that U either intern the "Lost Charm" or order the "Lost Charm" out of U's territorial waters. U, relying on the *Altmark* precedent in World War II, replied that it would not comply with either request.

Problem:

- a. Has U violated its duties as a neutral in refusing to comply with A's demand on behalf of the Defense Pact?
- b. Are the Defense Pact States entitled to use force against the "Lost Charm" in U's territorial waters, if U is unable or unwilling to comply with A's demand, and should have done so?

Solution:

a. U has violated its duties as a neutral in permitting an abusive use of its territorial waters that was not for bona fide purposes of navigation and was prejudicial to the security interests of the coastal state and to the interests of the Defense Pact as opposing belligerents. Such use is not the "mere passage" authorized by Article X of Hague Convention XIII.

b. While every breach of neutral duties does not authorize forceful counteraction by an aggrieved belligerent, in the case of such a grave violation as the instant Situation presents, the Defense Pact States were legally entitled to use force to prevent irremediable injury arising from U's breach of neutrality.

NOTES

The *Altmark* Case

The hypothetical situation is of course essentially similar to the *Altmark* case which took place in Norwegian territorial waters in 1940. A general and readable account of the incident is *The*

Altmark Affair, by Frischauer and Jackson (The Macmillan Company, New York, 1955). The essential facts of that case were briefly summarized in Hackworth, *Digest of International Law*, Vol. VII, pp. 568-69, (1943), as follows:

“The German steamer, *Altmark*, previously a merchant tanker but at the time in question a naval auxiliary, armed with anti-aircraft guns and flying the German official service flag as a vessel used for public purposes, entered Norwegian territorial waters on February 14, 1940 with the intention of skirting the Norwegian and Swedish coasts until she reached a German port. She brought from the South Atlantic as prisoners 299 British seamen who had been taken from vessels sunk by the German cruiser *Admiral Graf Spee*. Shortly after entering Norwegian waters she was hailed by a Norwegian naval vessel which inspected her papers. At that time the captain of the *Altmark* said that the ship was on her way from Port Arthur, Texas, to Germany. The next day another Norwegian naval vessel sought to inspect her but was refused the right. Among other questions, the captain of the *Altmark* was then asked whether there were on board any persons belonging to the armed forces of another belligerent or seamen resident in or nationals of another belligerent country, and to these he answered ‘No’. At this time it was learned that the *Altmark* had been using her wireless transmitter within Norwegian waters, but the captain said that he was unaware of any prohibition against this and thereupon ceased doing so. A Norwegian torpedo boat was escorting the *Altmark*, and a second joined them February 16. That day British naval and air forces approached, and the British commanding officer suggested that the *Altmark* be taken under joint British and Norwegian escort to Bergen for full examination, but the Norwegian commander refused. The Norwegian authorities apparently remained unaware that prisoners were aboard the *Altmark*. British destroyers which had entered Norwegian territorial waters retired upon the protest of Norwegian officials but that night they forced the *Altmark* into Joesing Fjord. While the Norwegian torpedo boats stood by, forces from the British destroyer *Cossack* boarded the *Altmark*, which had gone aground in the fjord. Fighting ensued in which seven Germans were

killed or died of wounds and one British national was wounded. The prisoners were rescued and taken aboard the *Cossack*, and the British forces departed from Norwegian waters with the prisoners."

Comparison of Facts in Situation and *Altmark* Case

There are certain important differences between the facts of the hypothetical situation and the *Altmark* incident. The transport of special weapons personnel and equipment is undoubtedly of a less "innocent" character, and more likely to provoke beligerent counter-action than the transport of prisoners. Moreover, with reference to question (b), the justification for the use of force has a stronger factual foundation in this Situation. Furthermore, there is no question involved in the Situation as to the legal status of captured merchant seamen. However, the avoidance by the *Altmark*, en route from the South Atlantic to Germany, of the English Channel and the British Isles by going via Icelandic waters and then passing through Norwegian territorial waters for over two days and more than 400 miles before the British attack, and contemplating a further passage of 200 miles in those waters was equally abnormal in route and duration. The basic legal question as to the legality of the passage is, therefore, essentially unaffected by the factual differences.

Opinions of Writers on *Altmark* Case

The *Altmark* incident aroused controversy at the time, and discussion of it has continued among writers on international law. Shortly after the incident occurred, the following opinion was expressed in the Naval War College International Law Situations, 1939, pp. 14-15:

"The British Government and some international lawyers charged that Norway had failed in its duties and that it should not have allowed the *Altmark* to transport prisoners along its coast. More careful examination of the situation, however, indicates that Norway had no obligation to halt the *Altmark*, to force it to leave, to intern it, or to release the prisoners."

Following this opinion, there appeared an extensive quotation from the similar opinion of the late Professor Borchard of Yale University which had appeared in full in 34 *American Journal of International Law* at pages 289-294 (1940). The late Professor Hyde, in the Second Revised Edition (1945) of his *International Law, chiefly as interpreted and applied by the United States*,

concurred essentially in the same position. (Vol. III, p. 2340). Hackworth, Vol. VII, p. 575, concludes his treatment of the incident by quoting the opinion of the Naval War College, *supra*. Among foreign writers, Castrén in *The Present Law of War and Neutrality* (Helsinki, 1954) discusses the question at pp. 515–517, and expresses doubt as to the validity of the British arguments in the matter.

British writers, on the other hand, have come to the defense of the British position, particularly after the end of the war and in light of the published views of the American writers noted above. Dr. W. R. Bisschop, however, discussed the question before the Grotius Society in 1940, and first raised in the literature the issue of whether the *Altmark's* circuitous route and extended trip through the Norwegian territorial waters was not an abuse of neutrality and therefore not the “mere passage” permitted by Article X of Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War (1907). ((1940) 26 *Grotius Society Transactions*, p. 67 *et seq.*) In Oppenheim, *International Law*, Vol. II (7th Ed., 1952, by Lauterpacht), the position is taken that prolonged use by a belligerent of neutral territorial waters for passage not dictated by the requirements of navigation and intended to escape capture is an illicit use of neutral territory which the neutral is under a duty to prevent (pp. 692–695).

Without discussing the *Altmark* case in detail, Professor H. A. Smith in *The Law and Custom of the Sea* (2nd Ed., 1950), reached the same conclusion as a matter of general principle (pp. 148–153, esp. p. 152, n. 5). Colombos, in *The International Law of the Sea* (3rd Rev. Ed., 1954) reaches the same conclusion in a summary manner (pp. 510–511). The most extensive discussion of the *Altmark* case and the most thorough exploration of the legal issues involved is in Waldock, “The Release of the *Altmark's* Prisoners,” (1947), 24 *British Year Book of International Law*, pp. 216–238. Professor Waldock, Chichele Professor of International Law and Diplomacy at Oxford, concludes that the *Altmark's* passage was unlawful. The details of his argument will be examined at a later stage. Professor Stone of Australia in his *Legal Controls of International Conflict* (1954) expresses a similar opinion although differing somewhat in the details of his argument (pp. 394–5).

Professor Telders of Leyden, The Netherlands, in “L’Incident de l’*Altmark*” (*Revue Générale de droit international public*, Vol. 48 (1941–5), pp. 90–100) reaches the same general conclusion but his arguments differ substantially from those previously referred

to. Starting with the view that the *Altmark* could not claim the status of a warship but that Norway could have treated her as such for neutrality purposes, Telders argues that there was no time limit on passage in Norway's regulations and that Norway, not having forbidden passage as it could have, had impliedly permitted it. He contends, further, that Article XII of Hague Convention XIII imposed no time limit, and that Article X authorized passage for purposes of transit, which is not restricted to necessary transit. Such passage is, moreover, not deprived of its innocent character by the sole fact that a warship is using the passage as an asylum as well. But he nonetheless concludes that the legality of the *Altmark's* position does not turn on the "passage" question because he argues that auxiliaries have no right to transport prisoners. Furthermore, whatever the immunity of warships from search, he asserts that auxiliaries have no such immunity. Therefore, he believes that Norway had a duty to search the *Altmark*; that its failure to do so was a breach of neutral duty; and that the British were justified on the basis of self-protection in their exceptional intervention which did not exceed the limits of necessity.

In addition to "*The Altmark Affair*," referred to previously as a good general account of the incident, the early official statements made by the British, German, and Norwegian Governments may be found in *Documents on International Affairs, "Norway and the War"* (Royal Institute of International Affairs, 1941, pp. 33-38). In *Norway, No. 1 (1950), Cmd. 8012*, reprinted, *infra*, as Appendix I to this Situation, a White Paper issued by the British Foreign Office on August 15, 1950, the text of the final British Note of 15 March 1940, which reached Oslo shortly before the German invasion, was made available. This Note was the first time that the British raised the question of the compatibility of the passage with the privilege given by Article X of Hague Convention XIII. *Cmd. 8012* includes the texts of other correspondence between the two governments in the period between 17 February and 15 March 1940. In the recently published *International Law Studies, 1955* (U.S. Naval War College, Vol. L, 1957), Professor Tucker discusses the *Altmark* case in some detail and, in general, agrees with the British position (221n, 236-239, 262n).

Provisions of Hague Convention XIII—Other Texts

Hague Convention XIII of 1907, Convention Concerning the Rights and Duties of Neutral Powers in Naval War, is printed in full in Naval War College, *International Law Situations, 1908*, at pp. 213-222, and in Appendix B to the *Law of Naval Warfare*

(Navy Department, 1955). The text may also be conveniently found in 36 Stat. 2415, *U.S.T.S.* 545, and *Malloy's Treaties*, Vol. II, p. 2352. The status of the Convention as of 31 October 1955 is given in State Department Publication No. 6346, page 203. Provisions particularly relevant to the discussion of the Situation are the following:

ARTICLE I. "Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral Powers, which knowingly permitted them, a non-fulfillment of their neutrality.

ARTICLE II. "All acts of hostility, including capture and the exercise of the right of visit and search, committed by belligerent vessels of war in the territorial waters of a neutral Power, constitute a violation of neutrality and are strictly forbidden.

ARTICLE V. "Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraph stations or any apparatus for the purpose of communicating with belligerent forces on land or sea.

ARTICLE X. "The neutrality of a Power is not affected by the mere passage through its territorial waters of ships of war or prizes belonging to belligerents.

ARTICLE XII. "In the absence of special provisions to the contrary in the legislation of the neutral Power, belligerent ships of war are forbidden to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE XIII. "If a Power which has been informed of the outbreak of hostilities learns that a belligerent ship of war is in one of its ports or roadsteads, or in its territorial waters it must notify the said ship to depart within twenty-four hours or within the time prescribed by the local regulations.

ARTICLE XXV. "A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above Articles in its ports or roadsteads, or in its waters."

Although the Convention was not technically in force in World War II because certain of the belligerents, including the United

Kingdom, were not parties (see Article XXVIII), it has been generally recognized that the provisions of the Convention as a whole constituted an expression of binding customary international law on the subject. II Oppenheim, *supra*, pp. 234–236, 694 n. 1; *Law of Naval Warfare, supra*, Ch. 2, n. 7, and Ch. 4, n. 18; Stone, *supra*, p. 391, n. 62. Before discussing the critical questions of interpretation that arise out of the ambiguities of the relevant provisions of the Convention, reference may be made to comparable statements of the applicable law. The Harvard Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War provides in Article 25 as follows:

“A neutral State has no duty to prevent the passage of a belligerent warship through its territorial waters.” (*American Journal of International Law*, Vol. XXXIII, Supplement, Part II, p. 179, and Comment, p. 421 (1939)). [Quoted with the permission of the Harvard Law School.]

In the Comment that follows at page 422, citation above, this wording is said to embody the substance of Article X of Hague Convention XIII and it is asserted to be a statement of the international law on the subject in force at that time.

Law of Naval Warfare (Department of the Navy, 1955), provides as follows in Section 443a:

“a. Passage Through Territorial Sea. A neutral state may allow the mere passage of warships, or prizes, of belligerents through its territorial sea.²²”

Interpretative Footnote 22 to Section 443 reads in part as follows:

“* * * Thus, the ‘mere passage’ that may be granted to belligerent warships through neutral territorial waters must be of an innocent nature, in the sense that it must be incidental to the normal requirements of navigation and not intended in any way to turn neutral waters into a base of operations. In particular, the prolonged use of neutral waters by a belligerent warship either for the purpose of avoiding combat with the enemy or for the purpose of evading capture, would appear to fall within the prohibition against using neutral waters as a base of operations. * * *”

The International Law Commission’s final Report on the Law of the Sea, adopted at its Eighth Session (1956), deals with the

right of Innocent Passage in Part I, Section III. The Report is reprinted in full, *infra*, Part II, Section 11,A,2. Although the International Law Commission's work is devoted to the law of the sea in time of peace, their formulations on this subject are valuable for the wartime situation as well, in view of the close connection between the wartime rules and the rules in peacetime, and the relevance of the peacetime standard to the interpretation of Article X, discussed, *infra*.

Article 15, paragraph 3, defines innocent passage as follows:

“3. Passage is innocent so long as the ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law.”

Article 16, paragraph 1, in defining the duties of the coastal State, states that it “must not allow the said sea to be used for acts contrary to the rights of other States.” In Article 17, defining the rights of protection of the coastal State, paragraph 1 authorizes said State “to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law.” Paragraph 3 authorizes the coastal State to suspend passage temporarily in definite areas if essential for protection of the rights in paragraph 1. Paragraph 4 forbids suspension of passage through straits “normally used for international navigation between two parts of the high seas.” Article 18 defines the duties of foreign ships during their passage. Articles 15, 16, 17, and 18 apply to ALL vessels.

Articles 24 and 25 are applicable to warships. Article 24 reads as follows:

“1. The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18.”

Article 25 authorizes the coastal State to require warships, not observing its regulations after request to do so, to leave the territorial sea.

In addition to the various texts referred to above, a high judicial interpretation of the meaning of innocent passage in a different context is of interest as a basis for comparison.

In the *Corfu Channel* case (Merits) (*International Court of Justice Reports*, 1949, pp. 4-38), the Court held that warships

have a right of "innocent passage" in time of peace through straits used for international navigation (p. 28). The Court was also of the opinion that the straits did not have to be a necessary route but merely one used for international navigation. Although the passage of British warships through the Corfu Channel was also designed to test the Albanian attitude in view of a previous illegal firing by Albania, and to demonstrate force, the Court held that, under all the circumstances, the "mission," and the manner of carrying it out did not deprive the passage of its innocent character (pp. 30-32). (The Judgment of the Court is reprinted in Naval War College, *International Law Documents*, 1948-49, pp. 108-156. The points discussed are to be found at pages 142-148).

"Mere Passage"

The principal legal issue that arises in question (a) of the Situation is whether the duration, route and mission of the "Lost Charm" can be considered "mere passage" through U's territorial waters, or an abuse of this privilege. This inquiry in turn requires the interpretation of Hague Convention XIII, and particularly Article X thereof. In the *Altmark* case, the early discussion by the Governments involved and the writers as well, was largely directed to the right to search the *Altmark* and the lawfulness of transporting the prisoners. The British Note of 15 March 1940, reprinted in Appendix I, *infra*, first published in 1950, and the British writers previously referred to, emphasized the "mere passage" question. Consequently, the discussion of the Situation will necessarily consider the arguments advanced on this aspect of the *Altmark* case.

Article X taken alone is ambiguous. It becomes even more so when read in the light of the Hague Convention XIII as a whole. On the one hand, the Convention is designed to prohibit belligerent activities of a hostile nature in neutral ports and waters. On the other hand, there are numerous exceptions which permit belligerents to use neutral ports and waters as an asylum. Furthermore, several of the provisions give the neutral great discretion in defining its obligations under the Convention.

The general principle is clear: that belligerents are bound to refrain from acts of hostility in neutral territory. What has been persistently troublesome, however, is the precise scope of the subsidiary principle expressed in Article V that neutral ports and waters shall not be used as a base of naval operations. Practice in the nineteenth century never resolved this problem and the provisions of Hague Convention XIII did not succeed in formulat-

ing an agreed and authoritative interpretation of this principle. See, for discussion, Hyde, *supra*, Vol. III, pp. 2249–2253; Stone, *supra*, pp. 392–395.

Neutrals are obligated to deny any privilege of passage to belligerents over the land territory or through the airspace of a neutral. It is now generally agreed that a neutral may, if it chooses, forbid passage through its territorial waters as well. See Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pages 120–121; *Law of Naval Warfare*, *supra*, Ch. 4, n. 22; Stone, *supra*, p. 395; II Oppenheim, *supra*, p. 693. When Hague Convention XIII was drafted, however, there was no such general agreement that a neutral could forbid passage through territorial waters. Many States argued that there was such a rule. The British insisted that there was a RIGHT of innocent passage. The British Delegation to the 1907 Hague Conference was the original proposer of the substance of Article X, and seemed to view “mere passage” as meaning innocent or inoffensive passage in the interests of normal navigation as in peacetime. Article X, as adopted, was in essence a formula for leaving this controversy in an unsettled status. By not adopting the rule of complete exclusion, the neutral was given the option of permitting “mere passage” in the interests of navigation rather than enforcing strict neutrality as neutrals are obligated to do under the land and air rules. See A. P. Higgins, *The Hague Peace Conferences (1909)*, pp. 467–468.

It is assumed for present purposes that State U has made no regulations on the subject with respect to either Article X or XII. The most reasonable interpretation of the Hague Convention as a statement of customary international law is thus the principal issue. Although, as stated, Article X is ambiguous in itself, it is first necessary to discuss the ambiguities in the relation of Article X to other Articles of the Convention. Article V forbids the use of neutral ports and waters as a base of naval operations by belligerents against their adversaries. Article XII provides that in the absence of special legislation by the neutral, as assumed in this Situation, belligerent warships are not permitted “to remain in” the ports, roadsteads, or territorial waters for more than twenty-four hours, “except in the cases covered by the present Convention.” What is the relation of these Articles to Article X, which, in substance, states that a Power’s neutrality is not compromised by the “mere passage” (“simple passage” in the French Text) of warships through its territorial waters?

Waldock, *supra*, at page 235, argues that “passage” is covered by the twenty-four hour rule of Article XII; that a circuitous route to evade attack was not “mere passage” within Article X

but the use of the neutral waters for naval operations contrary to Article V, or alternatively, if Article V was not violated, use for refuge was not "mere passage" within Article X, and therefore passage is restricted to twenty-four hours by Article XII.

These summarized conclusions of Professor Waldock do not do justice to his detailed argument, which may be briefly stated as follows: The Norwegian Neutrality Rules of 1938 (Vol. 32, *American Journal of International Law, Supplement*, 1938, pp. 154-158) purport to restate the Hague rules. Although they do not refer specifically to the duration of passage, they could not enlarge Article X which is customary international law. Article X, being silent, leaves the time question open. The question under Article XII is whether "remain" confines the twenty-four hour rule to stops or applies to every entry. Article XIII strengthens the argument for the twenty-four hour rule. There is no support for more than twenty-four hours in Norway's regulations, nor for Norway's distinction between passage after a stop and passage without a stop. The Pan-American General Declaration of Neutrality of 1939 said that belligerent warships may remain no more than twenty-four hours in ports and waters with no mention of passage (34 *American Journal of International Law, Supplement*, 1940, p. 10). The United States Proclamation of 5 September 1939 (Naval War College, *International Law Situations*, 1939, p. 123) made no exception for passage and the special rules for the Canal Zone (*Ibid.*, p. 139) make this position even clearer. Despite British championship of innocent passage, her 1912 regulations adopted the twenty-four hour rule with no mention of passage. Therefore, Norway's contention of no time limit is doubtful and contrary to the natural meaning of the Convention and the regulations and interpretations of states.

Moreover, Waldock's argument continues, whatever the time limit, passage is restricted to "mere passage," which means liberty of transit incident to normal navigation, and for that purpose and not to gain an advantage. Any other view invites abuse and provokes hostilities. An abnormal course of extended duration is not "innocent." The use of Norway's waters as a protected corridor is the use as a base of operations contrary to Article V. Article XII admittedly permits asylum under the twenty-four hour rule but is inconsistent with modern standards of neutral duty, and the trend in the practice of states is to restrict asylum, citing Naval War College, *International Law Situations*, 1939, p. 44, on treatment of warships AFTER entry. Even though Article XII was still valid in 1940 as a statement of customary law, it is not the same as indefinite passage through territorial waters, and

abnormal passage is not permitted by Article X. The use of Norway's territorial waters as a protected corridor was an issue in World War I. Norway closed her waters to submarines in 1916. Both Great Britain and the United States protested alleged violations of this prohibition and urged Norway to mine her waters, which she did in 1918. Therefore, Norway knew of these views concerning the use of her territorial waters as a protected corridor. Professor Waldock then concludes as summarized, *supra*.

Lauterpacht's *Oppenheim, supra*, pp. 694-5 and 694, footnote 1, argues that the permission of passage is limited by the overriding principle of preventing neutral waters from becoming a base for belligerents, and that a circuitous route not required by normal navigation and used as a means of escape is illicit. It is asserted that the provisions under reference can be reconciled by treating Article X as permitting passage beyond the twenty-four hours of Article XII, so long as the passage does not contravene Article V by turning the waters into a base of operations. Bisschop, *supra*, on the other hand, like Waldock, regards Article XII as setting a twenty-four hour limit to any passage under Article X. Professor Stone, *supra*, pp. 394-5, follows Lauterpacht's *Oppenheim* on this question but would require more in the way of circuitry and degree of abuse. Neither Hyde nor Borchard, *supra*, really discuss this issue. Smith, *supra*, p. 152, Note 5, regards the question of whether passage under Article X is subject to the twenty-four hour rule of Article XII as debatable, and believes it is probably up to the neutral to define the time limit under its power to do so granted in Article XII. Castrén, *supra*, recognizes the question of interpretation as doubtful but is inclined to regard Article XII as imposing no time limit on passage under Article X.

Telders, *supra*, considers that neither Article XII nor the Convention as a whole impose any time limit on passage but does not discuss the bearing of Article V on the question. The British Note of 15 March 1940, Appendix I, *infra*, takes the position that Article X does not incorporate the 24-hour limit of Article XII but that Article X governs the time limit indirectly by the nature of the innocent passage which it permits. Furthermore, the Note contends that, although Article XII is not controlling as to time, it serves to refute any contention that no time limit exists since it applies also to territorial waters subject to the innocent passage permitted by Article X. Finally, as noted *supra*, the *Law of Naval Warfare* in its interpretative footnote 22 treats Article X as modified by the prohibition of Article V. Interpretative footnote 23 treats the question of whether the 24-hour rule of Article XII limits the duration of passage under Article X as unsettled but

expresses the opinion that, if it does not, then passage under Article X must be limited to the normal requirements of navigation.

While, admittedly, the interpretation of the relationship between Articles V, X and XII in the light of the Convention as a whole is controversial, it is believed that the most reasonable interpretation is to regard "mere passage" under Article X as NOT limited by the 24-hour rule of Article XII. However, the presence and wording of Article XII help to give meaning to the privilege of "mere passage" in Article X, as discussed hereafter. Furthermore, the most probable interpretation of Article X, suggested *infra*, qualifies the privilege of passage given thereby. Finally, "mere passage" in Article X must also be restricted by the prohibitions of Article V against using territorial waters as a base of naval operations and by the generalized restrictions of Articles I and II and the Convention as a whole against using neutral territory for hostilities.

With this interpretation of the relationship between the Articles, we now turn to a more detailed discussion of the meaning of "mere passage" in Article X. What has been said so far suggests that Article X can only be considered in the context of the Convention as a whole. It has already been indicated that Article X was a formula that left previous differences of opinion unsettled. It was a compromise in that sense between the view that neutrals could exclude passage altogether, and the British view that there was a RIGHT of innocent passage for warships in wartime similar to the peacetime right of merchant vessels.

"Mere passage" in Article X can not be given a precise textual meaning. The legislative history provides no conclusive interpretation. The use of the qualifying word "mere" indicates some limitation on passage was intended. The British who introduced the phrase into their draft of the Article indicated that innocent passage in the peacetime sense was what they had in mind. Any meaning given to the phrase is necessarily an interpretation. What is the most reasonable one in the light of its history and the purpose it was intended to serve? Treating the question as one of defining what is meant by "innocent passage" in the peacetime sense is a step in the interpretation of "mere passage."

The introduction of "innocent passage" in the peacetime sense as an analogy for use in interpretation is fundamentally ambiguous. It can not be transferred literally into the wartime situation. The wartime trilateral relations between opposing belligerents and a neutral coastal state are essentially different in kind and degree from the bilateral relations of a flag-state

and a coastal state in peacetime. Nevertheless, the peacetime analogy serves to indicate the type of passage that belligerents were willing to allow neutrals to grant. The type of passage contemplated is limited by two basic criteria. It must be an innocent passage for bona fide purposes of navigation rather than for escape or asylum. The passage must also be innocent in the sense that it does not prejudice either the security interests of the coastal state, or the interests of the opposing belligerent in preventing passage beyond the type agreed to in Article X. A passage that increased the burden of surveillance or the likelihood of embroiling the neutral in hostilities would certainly prejudice the security interests of the neutral coastal state. Any passage that was prejudicial to other legitimate interests of the coastal state would warrant action by the coastal state but the coastal state would be under no duty since the additional interest of the opposing belligerent would not be involved. By virtue of these suggested requirements, the belligerents are entitled to have passage so confined, and the neutral is under a duty to so limit the privilege.

Such an interpretation is essentially in accord with the views of Lauterpacht, Stone, and Waldock. Lauterpacht's *Oppenheim*, *supra*, II, p. 694, n. 1, and p. 695; Stone, *supra*, pp. 394-5, and n. 83, p. 394; Waldock, *supra*, pp. 232-235.

The first of these criteria, that of passage for bona fide navigational purposes, presents difficulties in itself. Suggestions that it means "normal" navigation practices raise problems as to the sense in which "normal" is used. Abnormal routes may still be bona fide ones. Nevertheless, extremely circuitous routes suggest possible bad faith. Moreover, motivations of escape or asylum make clear the purpose is not for navigation.

With respect to the second criterion, it is believed that a passage by a belligerent that imposes special burdens of surveillance on the neutral and increases the likelihood of involving the neutral in hostilities with the opposing belligerent could not be "innocent" because it is prejudicial both to the security interests of the coastal state and to the interests of the opposing belligerent. This criterion would certainly encompass the use of neutral territorial waters as a protected corridor for purposes of avoiding capture or attack. Such a use might not reach the extent of employing such waters as a base for naval operations within the meaning of Article V, which certainly provides the outer limit to the reasonableness of the passage. In view of the ambiguity of Article V's prohibition against use as a base of naval operations referred to, *supra*, and the consequent doubt whether use as an asylum is

included in that prohibition, the interpretation suggested for "mere passage" in Article X gives it a meaning consistent with the Convention as a whole. Article XII permits a twenty-four hour "stay," including use as an asylum, but, as previously indicated, it imposes no direct time limit on passage. Article X, while having no time limit, confers a special but limited privilege of passage by confining it to a passage for bona fide navigational purposes and one that is also innocent in not being prejudicial to the security interests of the coastal state or the interests of the opposing belligerent. Article V applies to both "stay" and "passage" and prohibits either if it reaches the point of use as a base for naval operations.

It seems most likely, therefore, that "innocent passage" in peacetime of territorial waters as an international highway was intended as a standard in the sense indicated above. What effect does the duration of the passage have on its legality? It has already been stated that the twenty-four hour rule of Article XII is not believed to be a direct legal limitation. There would seem to be no maximum time limit provided that the passage itself is "innocent." Duration beyond twenty-four hours is relevant only in its bearing on the question of whether the passage is "innocent."

In the light of this interpretation of "passage" in Article X, does the "mission" of the ship furnish a further qualification of this limited privilege? It was strongly argued in the *Altmark* case that there was nothing wrongful *per se* in transporting prisoners. Whatever the merit of this contention, it would be unwarranted to claim that the nature of the "mission" has no bearing on the innocence of the passage. If the "mission" by its nature is prejudicial to the security interests of the coastal state or the interests of the opposing belligerent, either by increasing the burden of surveillance or by increasing the likelihood of hostilities, it would be another relevant factor in making that determination. *A fortiori*, if the "mission" by its nature makes use of the waters as a base of naval operations, it would be a violation of Article V as well as Article X.

Application to the Present Situation

The route, purpose, and mission of the "Lost Charm" were not for purposes of bona fide navigation and were clearly prejudicial to the security interests of U, the neutral and coastal state, and to the interests of the Defense Pact as opposing belligerents. The longer duration of the voyage, and the abnormality of the route, while neither would be decisive in itself, were relevant to the total assessment of the character of the passage. The "mission"

was so clearly provocative and so obviously a military function that it constituted by itself a violation of Article V, and therefore exceeded without question the limited privilege of "innocent" passage given by Article V. The passage was designed to make use of U's territorial waters as a shelter for naval operations. Passage in circumstances so overwhelming in their impact as these are should not be considered as the "mere passage" permitted by Article X. Such a passage is a flagrant abuse of U's neutrality. By permitting such a passage, U violated its duties as a neutral.

Application to the *Altmark* Case

The factual differences in the *Altmark* case have been noted, *supra*. Admittedly, the "mission" was less provocative. The abnormal route and the duration of the use of Norwegian territorial waters would not in themselves be decisive. It is debatable whether the total circumstances can be regarded as the use of the waters as a base for naval operations within Article V, in the light of the ambiguous history of that provision. It was, however, the use of Norway's territorial waters as a means of escape and protection. The passage, considered in its entirety, constituted an employment of the neutral's territorial waters in a manner that was prejudicial to the security interests of the coastal state and the interests of the opposing belligerent. It increased the burden of surveillance and the likelihood of counteraction. Such a passage must be regarded as an abuse of Norway's neutrality, and can not be justified by the limited privilege of "mere passage" given by Article X of Hague Convention XIII.

Right of Search

The present Situation does not require a discussion of the prisoner question which was an issue in the *Altmark* case and which was thoroughly debated by many of the writers cited previously. Although the search issue is not directly raised by the facts given in question (a) of the Situation, the right of the neutral to make a search was also thoroughly argued in the *Altmark* case, and is implicit in the Situation. Both Borchard and Hyde, *supra*, argued that there was no right to search a public ship such as the *Altmark*, except possibly to see if there was compliance with Norway's neutrality regulations (Borchard). Telders, *supra*, on the other hand, argued that an auxiliary such as the *Altmark* was not immune from search. Assuming, *arguendo*, that there is normally immunity from search, the position of Waldock (*supra*, pp. 221-222), that the neutral's duty to enforce its obligations under the Convention constitutes an exception to this im-

munity, is more consistent with the spirit of the Convention, and a more workable rule if neutrality is to be preserved. Lauterpacht's *Oppenheim, supra*, (p. 730, n. 4), concedes that Norway had no duty to search for the prisoners in order to release them, but argues that search would be relevant in determining whether the passage was "innocent," and therefore impliedly supports Waldock's position. The British Government Note of 15 March 1940, reprinted, *infra*, Appendix I, argued vigorously that Norway had an obligation to determine whether the passage was lawful, and that failure to make a search for this purpose was a violation of neutrality.

State U as a Neutral Member of the United Nations

U, although a Member of the United Nations, declared her intention to be neutral. Despite the inconsistency between the collective security scheme of the Charter and traditional neutrality, it has been asserted that a status of neutrality for a Member on the facts of this Situation is technically possible. It has been factually possible, as Korea demonstrated. It is debatable whether it is legally possible in view of the obligation of Members under Article 2 (5) that:

"All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."

The "veto" prevented the United Nations from taking "action" in accordance with the original Charter scheme, and the recommendations of the General Assembly, although morally persuasive, cannot be deemed legally binding even on Members. Consequently, it is permissible to contend that U was legally free to take the position she did. It is believed, however, that she would have been also legally justified if she had complied voluntarily with the recommendations. She had an imperfect right under Article 2 (5) to assist the collective action as well as the obligation not to give assistance to the States opposing the collective action. The right was "imperfect" in the sense that U and the Defense Pact's resort to force had not been authoritatively determined to be lawful by competent international authority.

The writers generally are in accord with this position. The *Law of Naval Warfare, supra*, in Section 232, deals with the question and reads in part as follows:

"Section 232. * * * * These obligations of the mem-

ber states, incompatible with the status of neutrality and with the principle of impartiality, come into existence only if the Security Council fulfills the functions delegated to it by the Charter. If the Security Council is unable to fulfill its assigned functions, the members may, in case of a war, remain neutral and observe an attitude of strict impartiality.¹⁹ ”

In footnote 19, the opinion is expressed that the recommendations of the General Assembly are not legally binding and therefore “neutrality and complete impartiality both remain distinct possibilities.”

Stone in *Legal Controls of International Conflict*, *supra*, *passim*, reaches this conclusion and asserts that the non-participating Members in the Korean situation were neutrals (p. 382, n. 14). Lauterpacht's *Oppenheim*, *supra*, pp. 647–652, reaches the same general conclusion, although believing that a member in U's position would have the right to discriminate against the aggressor. Lalive in “International Organization and Neutrality”, (1947), 24 *British Year Book of International Law* 72 at 77–84, discusses this possibility in a number of situations under the Charter, and concurs in the position taken above. Compare Taubenfeld in “International Actions and Neutrality” (1953), 47 *American Journal of International Law* 377–396, where the Korean situation is discussed, and the conclusion reached that neutrality is not legally tenable for a Member in a “true” United Nations action (pp. 390–395). Castrén, *supra*, pp. 433–5, believes that a status of neutrality for a Member is possible despite Section 2 (5) of the Charter.

Use of Force by a Belligerent to Redress Abuse of Neutrality

It will now be assumed that the X-coalition's employment of the “Lost Charm” was a violation of U's neutrality and that U was obligated to either intern the “Lost Charm” or order it out of her territorial waters. Question (b) of the Situation raises the issue of whether the Defense Pact was entitled to use force in U's territorial waters to redress the breach of neutrality if U was unable or unwilling to do so. Since the facts of the Situation show that U, relying on the *Altmark* precedent, refused to comply with the Defense Pact's request, the question of the Defense Pact's right to employ force against the “Lost Charm” is directly raised.

Article XXV of the Hague Convention, quoted *supra*, provides that a neutral is bound to exercise such surveillance “as the means at its disposal allow” to prevent violations of the Convention in

its waters. Articles III, VIII, and XXI, in referring to neutral duties of enforcement, also use the phrase "as the means at its disposal allow" in defining the obligation.

The facts stated in the Situation show a refusal to act, and do not therefore pose directly the issue of the use of force by a belligerent when the neutral is willing but unable to act for lack of adequate means at its disposal. Under these latter circumstances, there is no violation of neutral duty. Nevertheless, despite that fact and the quoted language of the Convention, the writers generally take the view that the injured belligerent, under sufficiently extreme circumstances, is authorized to use force to prevent irremediable injury to itself. The belligerent's obligation not to take hostile measures in neutral waters is inapplicable in extreme cases not only when the neutral is unwilling to act but also when it is unable to do so.

When, however, as in the Situation, the neutral is unwilling to act even though able to do so, the neutral has breached its duty both under the Convention and under the general principles of customary international law. Here, too, under sufficiently extreme circumstances, the injured belligerent is authorized to use force to prevent irremediable injury to itself. The injured belligerent's normal remedy for such a breach of duty is to claim reparation through diplomatic channels. For anything less than a grave breach of duty, this is the only authorized remedy. The writers also agree, however, that the belligerent is justified in resorting to self-help under sufficiently extreme circumstances in which immediate cessation of the violation would be the only adequate remedy. Whether the resort to self-help was justified will depend both on the importance of the interests involved and the factual necessity for immediate action if irreparable injury is to be avoided.

The *Law of Naval Warfare*, *supra*, after referring to the prohibition of acts of hostility in neutral jurisdiction, goes on to provide as follows:

"Section 441. * * * However, a belligerent is not forbidden to resort to acts of hostility in neutral jurisdiction against enemy troops, vessels, or aircraft making illegal use of neutral territory, waters, or air space, if a neutral state will not or cannot effectively enforce its rights against such offending belligerent forces.²¹"

In footnote 21, the opinion is expressed that, despite the language of Article XXV of the Hague Convention, it is recognized that a belligerent has the right, as an extreme measure, to use

force against an enemy making illegal use of neutral territory, when the neutral is unable or unwilling to do so.

Hyde, *supra*, although believing that the British were not justified in using force in the *Altmark* case, affirms that in extraordinary circumstances the belligerent is justified in using force when the neutral is unable or unwilling to do so (Vol. III, pp. 2337-2340). Waldock, *supra*, in defending the British action in the *Altmark* case, takes the position that any breach materially threatening the injured belligerent's interest is by its nature so serious that the principle of self-preservation justifies intervention in neutral waters, and that such right of intervention is now generally recognized, citing Hyde, *supra*. This right only accrues when the neutral is unable or unwilling to prevent the violation, citing Article XXV, *supra*.

Lauterpacht's *Oppenheim*, *supra*, in supporting the British action in the *Altmark* case, argues that in circumstances where reparation would be inadequate, resort to self-help is justified (Vol. II, p. 695, n. 1). Stone, *supra*, (p. 401 and note 117, p. 401) differs from Lauterpacht and Waldock. He argues that only in case of self-preservation would self-help be justified, and does not believe that self-preservation was involved in the *Altmark* case, citing the opinion of the International Court of Justice in the *Corfu Channel* case. In the *Corfu Channel* case (Merits), (1949), *International Court of Justice Reports*, pp. 34-5, the Court held that intervention for the purpose of procuring evidence of violation of duty was an illegal use of force and that self-protection or self-help did not justify the action of the British Navy in the circumstances (Naval War College, *International Law Documents*, 1948-49, pp. 151-152). Castrén, *supra*, affirms the right of the injured belligerent to resort to self-help when the situation is serious, and the neutral is unable or unwilling to act (p. 442). Telders, *supra*, argues that the British, not exceeding the limits of necessity, were fully justified in the *Altmark* case under international law, and supported not only by writers in general but by German doctrine as well (pp. 98-99).

There is some dissent from this position. See Briggs, *The Law of Nations* (2nd Ed., 1952), p. 1039, and compare the Harvard Research Draft Convention on *Rights and Duties of Neutral States in Naval and Aerial War*, 33 *American Journal of International Law*, Supp., 1939, Articles 6, 8, 23, and 24, and comments at pages 247-249, 257-263 and 392-421.

The question should be noted whether self-help in this situation by the injured belligerents, being Members of the United Nations, would constitute a violation of the Charter in view of Article 2,

paragraphs 3 and 4, and Article 51, which preserves the "inherent" right of self-defense. Paragraph 3 requires Members to settle their disputes by peaceful means in such a manner that international peace is not endangered. Paragraph 4 reads as follows:

"All Members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Full discussion of this important issue will not be attempted here. In brief, it is believed that the use of force in the extreme circumstances of the Situation would still be justified as a measure of self-defense. In borderline situations, however, such as the *Altmark*, if the Charter had thus been applicable, the use of force might be prohibited by the mandate of Article 2, paragraph 4. Consequently, to some extent, the neutral's territory in a future war may theoretically receive additional protection from this Charter provision. For further discussion, see Waldock, "The Regulation of the Use of Force by Individual States in International Law," *Recueil des Cours*, 1952, Vol. II, pp. 455-517, in which he considers the impact of the *Corfu Channel* case as well as the provisions of the U. N. Charter on the lawful use of force by individual states in international law.

Application to Present Situation

It has been seen that there is a general consensus that an injured belligerent has the right to resort to self-help if the circumstances are sufficiently serious and the neutral is unable or unwilling to intervene to redress the breach of neutrality. The presence of special weapons personnel and equipment on the "Lost Charm" with their proximity to an area of operations made immediate action imperative, and the normal diplomatic remedies useless. Since U had refused to act, the Defense Pact forces would be fully justified under international law and under the Charter in using force to stop the X-coalition's abuse of U's neutrality. The fact that the Defense Pact States were acting under a General Assembly Resolution, even though not legally binding, provides additional support.

Application to *Altmark* Case

On the facts of the *Altmark* case, the right of self-help presents a debatable question. As indicated previously, the writers have divided on the merits of the British intervention. Assuming

for the purpose of this aspect of the case that Norway had violated its duties as a neutral, the legality of the British intervention turns on whether the breach of neutrality was sufficiently serious to justify this extreme measure. Diplomatic redress would certainly have been inadequate under the circumstances. If Stone is correct that self-preservation is required, then intervention would not be justified. In view of the weaknesses of international society in providing adequate means for redressing wrongs, a rule permitting intervention on the ground of self-help on the facts in the *Altmark* case might be justified. Such a rule would be more in accord with the realities and more likely to insure the survival of the rules of neutrality. On the other hand, resort to self-help should be confined to the gravest circumstances. On moral and humanitarian grounds, the British intervention can be understood and defended. It is difficult to say dogmatically that their intervention violated the law in force at the time. The thrust of the Charter provisions and the *Corfu Channel* case, however, suggest that the use of force under such circumstances would now be illegal. In view of the weaknesses of international institutions previously mentioned, it may still be questioned whether such a conclusion is desirable.

Student Comments

The small student staff assigned to study and comment on the Situation concluded that the passage of the "Lost Charm" was not innocent and that self-preservation and self-help justified the use of force to end the violation of U's neutrality. The warlike nature of the "mission" was emphasized. The view was expressed that Hague Convention XIII needs reexamination in the light of modern weapons systems, which make necessary stricter measures to curb the advantages which may accrue to a belligerent in neutral waters. The right of self-preservation is more immediately involved. The passage of warships carrying materiel and personnel to a combat zone cannot be "innocent" and the neutral should be obligated to prohibit such transit if neutrality is to be preserved.

Adequacy of Convention XIII

As suggested by the student staff comments, the Situation raises the question of the adequacy of Hague Convention XIII. Drawn up as it was in a period of comparative calm, and before the widespread violations of neutrality in the last two World Wars, it is inevitable that its provisions are no longer adequate for the conditions of modern warfare. Stone, *supra*, has dealt at

length with the contemporary crisis of neutrality and has stressed, *inter alia*, the effect of the inability of neutrals to live up to their duties (*Passim*, and especially on Hague Convention XIII, pp. 391–396, and Discourse 23, pp. 402–407). Professor Hyde argued convincingly the inadequacy of proclaiming the inviolability of neutral territory and then permitting belligerent uses thereof which inevitably inspired warlike activities therein. He suggested, therefore, that passage through neutral coastal waters “should, by general agreement, be greatly restricted, if not entirely forbidden” (Vol. III, p. 2312).

Professor H. A. Smith, *supra*, suggests in general terms that neutrality as presently constituted is unlikely to survive in any great conflict involving most of the world but that it may continue to serve its traditional purpose in small wars (pp. 75–76). He points out that the survival of neutrality even under these circumstances will depend on the strictness with which it is observed. He argues that the chances of such survival would be greatly enhanced if a general policy of exclusion by neutrals of belligerent warships from their territorial waters were followed, as the Netherlands did in World War I. Consequently, sound policy should restrict as much as possible the facilities which belligerents can claim in neutral ports and waters. The right of “innocent passage” in this context is anomalous. He concludes that exclusion would be acceptable to belligerents, if territorial waters are restricted to the traditional three miles (pp. 160–161).

This last proviso of Professor Smith requires a brief discussion of the effect that the decision by the International Court of Justice in the *Fisheries* case, reprinted, *infra*, in this volume, and other current developments in national claims to more extensive internal and territorial waters, documented, *infra*, in this volume, will have on the problem raised by the Situation. The *Fisheries* decision, by expanding the area of internal waters in which it has been customarily understood no right of innocent passage exists, and the similar effect of certain national claims, will restrict the sea space available to belligerent operations. It should be noted that the International Law Commission in its final Report on the Law of the Sea provided in Article 5, paragraph 3, that, where straight base lines, newly established, enclose as internal waters areas previously considered high or territorial seas, a right of innocent passage through such waters should be preserved whenever such waters have normally been used for international traffic. Whether such an exception could now be implied through such waters for the “mere passage” provided by Article X of Hague Convention XIII (1907) is very doubtful.

To the degree the decision and other recent claims have the consequence of extending the width of the territorial water belt itself, it will both restrict the sea space available to belligerent operations and broaden the area in which "innocent passage" is permitted. Such an expansion will markedly increase the neutral's task of surveillance and similarly enhance the probabilities of belligerent abuse of the "mere passage" privilege. These considerations, in turn, accentuate the danger of counteraction by an aggrieved belligerent.

In view of these probable consequences, an extensive broadening of the territorial sea will probably prove unacceptable to belligerents and should give pause to neutrals themselves. It could lead, on the one hand, to the increased insistence of belligerents on the right of passage despite the greater difficulties, and, on the other hand, to greater likelihood that neutrals would follow a policy of restricting or prohibiting innocent passage entirely. Such a policy of exclusion, suggested previously, would only be acceptable to belligerents if the traditional limits of territorial waters are maintained, as Professor Smith has indicated.

Summary Conclusions

The Problem Situation and the *Altmark* case both suggest the need for a more intensive study of the privilege of innocent passage through neutral territorial waters by belligerent warships. Whatever the differences of writers on the *Altmark* facts, it is clear that the provisions permitting "mere passage" are ambiguous and permit abuse, which in turn encourages the taking of forceful counteraction by an aggrieved belligerent. This can only lead to a breakdown in the maintenance of the rules of neutrality. To preserve the institution of neutrality, a tightening of the rule, or, preferably, a rule of complete exclusion, (if present territorial water limits are maintained), would be desirable. The recent tendency to make claims to more extended internal and territorial waters makes the problem more urgent. Similarly, the development of the means of modern warfare requires greater strictness in the rule. Even under the existing rule, the use of an abnormal route of long duration for a warlike "mission" is not for bona fide purposes of navigation and is prejudicial to the security interests of the coastal state and to the interests of the opposing belligerent. Such use must therefore be regarded as a violation of the rule. While the legality of the use of force in extreme situations must be admitted, a strengthening of the rule would serve to lessen, and, if possible, prohibit resort to such measures.

Solution

(a) U has violated its duties as a neutral in permitting an abusive use of its territorial waters that was not for bona fide purposes of navigation and was prejudicial to the security interests of the coastal state and to the interests of the Defense Pact as opposing belligerents. Such use is not the "mere passage" authorized by Article X of Hague Convention XIII.

(b) While every breach of neutral duties does not authorize forceful counteraction by an aggrieved belligerent, in the case of such a grave violation as the instant Situation presents, the Defense Pact States were legally entitled to use force to prevent irremediable injury arising from U's breach of neutrality.

APPENDIX I TO SITUATION I

Correspondence between His Majesty's Government in the United Kingdom and the Norwegian Government respecting the German Steamer *Altmark*. (London, 17th February–15th March 1940. *Norway No. 1 (1950)*, *British Command Paper No. 8012*.)

NOTE. This correspondence, taken from *British Command Paper No. 8012*, printed in 1950, is reprinted below for convenient reference. The Document (Cmd. 8012) is British Crown copyright, and permission to reprint in this volume has been obtained from the Controller of Her Britannic Majesty's Stationery Office through the courtesy of the British Foreign Office by a letter to the Editor dated 26 September 1956. The early official statements by the British, German, and Norwegian Governments have been available since 1941. See *Documents on International Affairs, Norway and the War* (Royal Institute of International Affairs, (1941), pp. 33–38).

CORRESPONDENCE BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE NORWEGIAN GOVERN- MENT RESPECTING THE GERMAN STEAMER "*ALTMARK*"

London, 17th February–15th March, 1940

FOREWORD

The *Altmark* was, from the point of view of international law and practice, of considerable importance as a legal precedent. The incident has been dealt with by various distinguished publicists on international law but because the full correspondence has never been published they have not had all the necessary information before them in order fully to appreciate it from the legal point of view. Consequently, it is thought to be desirable, after consultation with the Norwegian Government, to publish the texts of the exchanges of notes which took place between the two Governments between 17th February and 15th March 1940.

No. 1

Record of Conversation Between Viscount Halifax and Monsieur Colban

Important

I asked the Norwegian Minister to call this afternoon and informed him that I thought his Government should be placed in possession of certain facts already known to us in connection with the liberation of the prisoners from the steamship *Altmark*.

2. The British authorities had been in touch with this ship for some time. It was notorious that she had participated in the depredations of the *Graf Spee*, to which she had been acting as auxiliary. We had the best of reasons, confirmed by the British subjects taken off the *Graf Spee* and previously imprisoned in the *Altmark*, to believe that there were some three or four hundred British subjects aboard who had been living for weeks under intolerable conditions. The *Altmark* was also credibly believed to possess offensive armaments. The record of this ship must have been well known to the Norwegian Government and in the view of His Majesty's Government it was incumbent on the Norwegian authorities, when she entered Bergen and requested passage through Norwegian territorial waters, to subject her to a most careful search.

3. His Majesty's Government would be grateful for full particulars as to how this search was conducted and what facts were discovered. Reports received by His Majesty's Government indicated that the examination had been perfunctory, and in any case prisoners had not been discovered. On evidence received hitherto, it appeared to His Majesty's Government that the Norwegian Government had failed in their duties as neutrals. It had been suggested to me that the result of the examination would have been such that the Norwegian Government would have felt obliged to release the prisoners. His Majesty's Government would be glad to know what action the Norwegian authorities would have taken if the prisoners had been found. Surely they would either have released them or at any rate held them pending a full examination of the position.

4. In brief, if no prisoners had been found when the ship was boarded, the Norwegian Government would have had an excellent ground for complaint. The prisoners, however, having been found, His Majesty's Government considered that they had every right to complain that the search carried out had been perfunctory.

5. The legal question, however, appeared to me of less im-

portance than the fact that three or four hundred British subjects had been kept for many weeks in conditions in which no decent person would have kept a dog. The fact that the Norwegian Government did not find a pretext to detain the ship or even to take off the sick among the prisoners appeared to His Majesty's Government to give them good cause for complaint against the Norwegian Government. In reply to an enquiry, I informed the Minister that the action taken had been with the full assent of His Majesty's Government. In view of the urgency, prior notification to the Norwegian Government had not been possible. His Majesty's Government did not deny that Norwegian territorial waters had technically been infringed. They felt, however, that the case against the German authorities was so overwhelming that they were justified in pressing that the ship should be interned.

6. The Norwegian Minister stated that he had no information regarding the search at Bergen, but that he would inform his Government at once of what I had said and invite replies to the various questions asked.

7. I then turned to the note which the Minister had handed to me.¹ I observed that I took note of his Government's protest and their reservation of rights, and would furnish a detailed reply as soon as possible. I observed, however, that the Norwegian Government would surely not seriously expect His Majesty's Government to return the prisoners; to which the Minister replied that this was indeed their intention, as the only means of restoring the case to a legal basis.

Foreign Office,

17th February, 1940.

No. 2

Monsieur Colban to Viscount Halifax

Royal Norwegian Legation,
London, 17th February, 1940.

My Lord,

On the 16th February, 1940, in the afternoon the German steamer *Altmark* was in Norwegian territorial waters, escorted by a Norwegian torpedo-boat. At 4:30 p.m. two British destroyers fired shots of warning to stop the *Altmark* in the neighborhood of the Foksteinene. The Norwegian torpedo-boat protested against

¹ Document No. 2.

this. The *Altmark* went in the Jössingfjord, and the destroyers followed and remained at the entrance of the Fjord. The Norwegian torpedo-boat once more protested, and the English force, which was then increased to one cruiser and five destroyers moved outside the three nautical miles limit.² Some time later a destroyer again entered Norwegian territorial waters and went close by land and used searchlight. At 11 p.m. the English cruiser moved into the Fjord and boarded the *Altmark*. A struggle followed, and it is reported that several Germans were killed and wounded. It is stated that about 400 British subjects on the *Altmark* were taken on board the British ship which thereafter went out.

The Norwegian guard-ships consisted of two small torpedo-boats, and they could in face of the overwhelming British force do nothing but protest with energy.

I have been instructed immediately to bring this to the British Government's notice and to lodge a serious protest against this grave violation of Norwegian territorial waters, which has caused strong indignation, as it took place in the interior of a Norwegian Fjord, and thus cannot be due to any mistake or difference of opinion with regard to the limit of the territorial waters.

The Norwegian Government must demand that the British Navy be instructed in future to respect Norwegian Sovereignty.

² The following is a translation of a note regarding Norwegian neutrality which was addressed to His Majesty's Minister at Oslo by the Royal Norwegian Ministry for Foreign Affairs on 4th September, 1939.

"Sir,

I have the honour to send you herewith a copy of the Royal Proclamation of the 3rd inst. on Norway's neutrality in the war between Great Britain and France on the one side, and Germany on the other.

I have also the honour to inform you that it has been laid down by Royal Resolution of the 3rd inst. that—

- '(1) In the war which has broken out between foreign Powers, Norway will maintain complete neutrality. The rules and regulations concerning neutrality which are in force (see the Royal Proclamation of 13th May, 1938) will not be applied outside a distance of three nautical miles from the coast.
- (2) In every other respect the regulations regarding territorial waters, hitherto in force, remain valid.'

This decision has been taken in order to avoid the difficulties which might arise in consequence of doubt as to the extent of territorial waters. The decision is in conformity with the practice followed in the Great European War, 1914-18.

In requesting you to inform your Government of the above, I beg you to accept the assurance of my highest consideration.

(Sd.) HALVDAN KOHT."

The Norwegian Government expect of the British Government that they will hand the prisoners over to the Norwegian Government and make due compensation and reparation.

I have, &c.
(Sd.) ERIK COLBAN.

No. 3

Monsieur Colban to Viscount Halifax

Royal Norwegian Legation,
London, 24th February, 1940.

My Lord,

I have had the honour to give you to-day ³ verbal information in answer to certain questions raised by you in the *Altmark* case, and my Government hope thereby to have contributed to the establishment of the real facts of the case and to have made clear the view of the Norwegian Government on the matter.

My Government hope that the British Government, after what has thus been stated, will feel themselves convinced that the Norwegian Government have acted in this case in strict accordance with International Law.

If, however, the British Government should maintain their view, the Norwegian Government would propose that the difference of opinion between the two governments be submitted to arbitration, in such a manner as might be laid down in a special agreement.

I have, &c.
(Sd.) ERIK COLBAN

No. 4

Aide-Mémoire

(Left with Viscount Halifax by Monsieur Colban on
24 February 1940)

Royal Norwegian Legation.

The *Altmark* was visited by a Norwegian torpedo-boat in Norwegian territorial waters off Kristiansund the 14th February last. It was then declared that the ship was on her way from an American port (Port Arthur, Texas), to Germany and armed with small anti-aircraft guns for her own defence, which guns

³ Document No. 4

had been dismantled before arrival in the territorial waters. She carried "Reichsdienstflagge" as a sign of her belonging to the German State. In Sognesjøen the vessel was hailed by a torpedo-boat and questions were asked, amongst these, whether persons were on board, who belonged to the armed forces of a belligerent country, or sailors domiciliated in or citizens of a belligerent country. The answer was that no such person was on board. When the *Altmark* was later on hailed by another Norwegian naval vessel north of Bergen, the captain of the *Altmark* refused his ship to be searched. As the ship was an auxiliary naval vessel and thus assimilated to a war vessel in respect of immunity, the Norwegian authorities had, in International Law, no power to proceed to further inquiries, nor to prevent the continuation of the voyage in Norwegian territorial waters.

The *Altmark* did not call at Bergen or at any other Norwegian port or anchorage, as seems to have been, erroneously, supposed. No question of a 24 hours limit thus arises. Neither The Hague Convention nor the Norwegian Neutrality Rules prescribe any limited time in case of passage.

As the *Altmark* did not call at a Norwegian port, the Norwegian Government had not had to decide what ought to have been done with the ship or the prisoners, if that had been the case. Generally, it can only be said that the Norwegian Government would also in such a case have done their best to fulfill all their international obligations.

The British Government have themselves emphasized the right of vessels of war to passage in neutral territorial waters. Reference to this right was made in the memorandum presented to the Norwegian Foreign Minister by the British Minister in Oslo on the 23rd of May, 1939, to which memorandum the Norwegian Foreign Minister replied on the 2nd September, 1939.

The Norwegian Government are desirous to underline that it was their duty in this case correctly to observe the rules of International Law to both sides. And the Norwegian Government do not have any doubt as to the meaning of these rules.

As to the assertion that the British prisoners have been badly treated, and that Norway ought to have considered the situation from the humanitarian point of view, the Norwegian Government would like to say that they can understand the feelings of the British Government at the thought that British prisoners were on board the *Altmark*. The Norwegian Government, however, consider that a neutral state cannot interfere between Belligerent

Powers or in their disputes without definite authority for so doing in a treaty or in some recognised rule of International Law.

No. 5

“Oral Communication” Made by Monsieur Colban on 8th March 1940

At the enquiry which has been made in Norway in the *Altmark* case, the following has been established:—

On the 16th of February at 5 o'clock p.m., the Commander of the *Cossack* informed the Commander of the Norwegian torpedo-boat *Kjell* that he was instructed by the British Admiralty to liberate 400 British prisoners on board the *Altmark*. The Commander of the *Kjell* declared that he had no knowledge of the presence of prisoners on board, and that his instructions were to the effect that he should prevent violation of Norway's neutrality. The Commander of the *Cossack* proposed inspection on the spot. The Commander of the *Kjell* declined this and asked the British Commander to leave Norwegian territorial waters at once.

At 11 p.m. on the same day, when the *Cossack* entered the Jössingfjord, her Commander replied to the Norwegian protest that he had instructions from the British Government to liberate the prisoners he had mentioned in the afternoon.

Apart from what is stated above, no request for joint Norwegian-British inspection was made, and no other declaration was made on the Norwegian side as to the presence of prisoners on board.

The *Altmark* used her wireless station illegally on the 15th February at 1:23 p.m. in a telegram to the German Legation in Oslo. The telegram was stopped by the Norwegian authorities, and the captain of the *Altmark* was at once informed that he had violated the regulations in force. He apologised.

No. 6

Viscount Halifax to Monsieur Colban ⁴

Foreign Office, 15th March, 1940

Your Excellency,

On the 17th February last, I requested your Excellency to call upon me in order that I might give the Norwegian Government

⁴ This note reached Oslo shortly before the German invasion of Norway and, in that circumstance, the Norwegian Government were not in a position to send a reply.

certain facts which had already come to the knowledge of His Majesty's Government in the United Kingdom in connexion with the liberation of the British prisoners from the German naval auxiliary vessel *Altmark*.

At that interview I explained the general attitude of His Majesty's Government to the case as then known to them, and I requested certain information as to the action taken by the Norwegian Government and the results of that action. Your Excellency was good enough to undertake to obtain replies to the various questions which I had put to you, and at the same time handed me your note of the 17th February, in which the Norwegian Government lodged a serious protest against the grave violation of Norwegian territorial waters which they considered to have occurred, and stated that they expected His Majesty's Government to hand the British prisoners over to the Norwegian Government and make due compensation and reparation.

On the 24th February I had the honour to have a further interview with you, at which you were so good as to convey to me the replies of your Government to the questions which I had put to you on the 17th and handed to me your note No. 79 of the 24th February, which stated that, in the light of the information given in reply to my questions, the Norwegian Government hoped that His Majesty's Government would feel convinced that the Norwegian Government had acted in this case in strict accordance with international law, but that if His Majesty's Government should maintain their view, the Norwegian Government would propose that the difference of opinion between the two Governments should be submitted to arbitration. I now desire to make the following observations on your Excellency's notes and on the case in general.

2. The facts of the case as now known to His Majesty's Government, both from their own information and from the various statements made by the Norwegian Government, are as follows. The *Altmark*, a ship of about 18,000 tons gross, with a speed of approximately 25 knots, is a German naval auxiliary vessel. She appears in the 1939, official list of "Die Schiffe der deutschen Kriegsmarine," where she is described as a supply ship ("Trosschiff"). There is no doubt that she should be treated in the same manner as a warship, and indeed the German official wireless, despite the fact that it at first described her as an "innocent merchant vessel," subsequently admitted that she was being used as a naval auxiliary vessel.

3. The *Altmark* had been for a period of many weeks in attendance on the German armoured ship *Admiral Graf Spee*

during the later's operations in the Atlantic and elsewhere, and is known to have fuelled her at various times during that period. In particular, the crews of a considerable number of British merchant ships sunk by the *Admiral Graf Spee* were placed by her Commanding Officer on board the *Altmark*, and at the time of the destruction of the *Admiral Graf Spee* the number of these prisoners amounted to about 300. After the destruction of the *Admiral Graf Spee*, the *Altmark* left the South Atlantic and endeavoured to return to Germany, the object of her voyage being clearly to complete the operation, which began with the capture of the prisoners in question, by their removal to Germany as prisoners of war. The prisoners were in charge of an armed guard composed of seamen from the *Admiral Graf Spee*. The British naval authorities, who were aware of the *Altmark's* intended return to Germany, had made the necessary dispositions to intercept her if she came through the North Sea.

4. The *Altmark*, however, did not adopt this, the natural and ordinary route for a ship returning to a German port from the Atlantic. She entered Norwegian territorial waters on the 14th February at some point off the Trondhjem Fjord, and proceeded through those waters in a southerly direction. A little further south she was stopped by a Norwegian torpedo-boat, whose Commander made a request to inspect the ship. It appears that as the *Altmark* was regarded as a warship and carried the German State flag, the Norwegian officers considered that the only thing he was entitled to do was to ascertain that the ship really was what she purported to be. He examined her papers, which are stated to have been in order, and was informed that the ship was on her way from Port Arthur, Texas, to Germany and that she carried anti-aircraft guns for her own defence.

The *Altmark* proceeded on her way, but further south at Sognesjøen she was hailed by another Norwegian torpedo-boat and was asked whether there were any persons on board who belonged to the armed forces of a belligerent country, or sailors domiciled in, or citizens of, a belligerent country. The answer was that no such person was on board. The ship was again allowed to proceed, but it appears that the Admiral Commanding at Bergen was not satisfied about her, and on the 15th February, when the *Altmark* was about 100 miles from Bergen, a Norwegian guard ship stopped her and asked to inspect her. This the *Altmark's* captain refused to allow, and the request was dropped. It was then discovered that the *Altmark* had been using her wireless in Norwegian territorial waters in contravention of the Norwegian neutrality regulations, and a complaint of this was made by the

Norwegian authorities; the captain made an apology, declaring that he was unacquainted with this prohibition, and the matter was apparently not pursued further.

5. The Norwegian Government state that the *Altmark* did not call at Bergen or any other Norwegian port, and His Majesty's Government naturally accept this statement. There is, however, no doubt that she passed through the "Bergen defended area," a zone about 20 miles long from north to south, which constitutes one of the Norwegian "ports et espaces maritimes qui auront été déclarés ports de guerre" which belligerent warships are forbidden to enter under Article 2 of the Norwegian Neutrality Regulations. Inasmuch as such a violation of their Regulations obviously could not have escaped the vigilance of the Norwegian authorities, His Majesty's Government assume that special permission was given by them to the *Altmark* to pass through the area in question, although the Regulations make no provision for any exceptions to this prohibition. As to the grounds on which such permission was requested and the reasons which led the Norwegian Government to grant it, His Majesty's Government have no information; but they have no doubt as to the motives which led the ship to desire to pass through the area, and I shall return to this point later.

6. The *Altmark* continued on her voyage south through Norwegian territorial waters, apparently escorted by a Norwegian torpedo-boat, and on the 16th February she was finally encountered by H.M.S. *Cossack* in the Jössingfjord in the circumstances with which the Norwegian Government are acquainted. The Commanding Officer of H.M.S. *Cossack* had been instructed by the British Admiralty to propose to the Commander of the Norwegian torpedo-boat that a joint Anglo-Norwegian guard should be placed on board the *Altmark* and a joint Anglo-Norwegian escort provided to accompany her to Bergen in order that the matter might be properly investigated there by the Norwegian authorities. The Commanding Officer of H.M.S. *Cossack* has reported that he carried out these instructions, but that his proposal was declined by the Norwegian Commander in accordance, as he stated, with the instructions of his Government. The Commanding Officer of H.M.S. *Cossack* then invited the Norwegian Commander to accompany the British boarding party during their impending search of the *Altmark*, but he declined to do so.

Your Excellency has informed me that, according to the information in possession of your Government, the Commanding Officer of H.M.S. *Cossack* proposed inspection on the spot but that, apart from this, no request for joint Norwegian-British inspection was made. It is possible that some confusion may have arisen be-

tween inspection at Bergen and inspection on the spot, but His Majesty's Government have no doubt, in view of the specific instructions which they had issued, and the reports which they had received, that both proposals were, in fact, made by the Commanding Officer of H.M.S. *Cossack*. It is in any case clear, on your Excellency's statement, that an offer of joint inspection was made and was declined by the Norwegian Commander.

The *Altmark* was then boarded and the British prisoners released and taken on board H.M.S. *Cossack*. The *Altmark* had previously attempted to ram H.M.S. *Cossack* and drive her ashore and resistance was offered to the boarding party by the German armed guard, the first shot being fired at a British warrant officer, who was wounded by it. There was some loss of life on the German side, but no injury to Norwegian life or property took place. I desire to add that at that point the *Altmark* had passed through some 400 miles of Norwegian territorial waters from the point at which she entered them, and the total length of those waters which she would in all probability have traversed if her voyage had not been interrupted is over 600 miles.

7. Such being the circumstances of the case, His Majesty's Government consider that it was the duty of the Norwegian Government, before allowing the *Altmark* to continue her voyage through Norwegian territorial waters, and particularly before granting her permission to pass through the "Bergen defended area," to ascertain by means of a proper investigation not only the status of the ship but also the nature and object of her voyage and of the use to which she was putting those waters. It is clear that the Norwegian Government failed to do so. On at least three occasions the *Altmark* was stopped by a Norwegian warship and there was ample opportunity for such an investigation, but none was made, and the proposals for investigation made by H.M.S. *Cossack* were refused. In consequence, the Norwegian Government were, according to their own statement, unaware throughout of the material fact that the *Altmark* had about 300 British prisoners on board.

In this connexion His Majesty's Government attach particular importance to the incident at Sognesjøen, when a Norwegian torpedo-boat specifically enquired whether the *Altmark* had on board any sailors who were citizens of a belligerent country, and was answered in the negative. This indicates that the Commander of the Norwegian torpedo-boat had some suspicions as to the true position; but the really important consideration is that the fact of the Commander of the *Altmark* having found it necessary to reply to the enquiry by a barefaced lie shows that he at any rate considered the presence of the British prisoners on board to be so

material a circumstance that it was essential to keep it from coming to the knowledge of the Norwegian authorities, even at the sacrifice of his personal honour. He obviously felt that if this circumstance came to the knowledge of the Norwegian authorities, his purpose in using the protection of hundreds of miles of Norwegian territorial waters to ensure the safe conveyance of the prisoners to Germany would be frustrated. It is, in fact, clear that both the Norwegian Commander and the German Commander regarded the presence or absence of prisoners as a relevant circumstance. The fact that the question was asked and that it was untruthfully answered seems to indicate that both Commanders took the same view as His Majesty's Government, indicated in paragraphs 14 to 16 of this note, of the application of Article 10 of The Hague Convention No. XIII,⁵ to the use being made by the *Altmark* of Norwegian territorial waters.

The attempts of the Norwegian officers to make a proper investigation of the case were met by refusals to allow the ship to be examined, backed by a deliberate lie, and no proper investigation, which would have immediately revealed the true situation, took place at all.

8. The Norwegian Government seem to regard this result as inevitable. They appear to take the view that once the *Altmark* had been acknowledged as bearing the character of a warship, they had no right to make any investigation of the nature and object of her voyage and use of Norwegian waters, and were only entitled to look at her papers. His Majesty's Government cannot accept any such view. If a belligerent warship proposes to make use of neutral ports or territorial waters, the neutral Government has not only the right but a definite obligation to make such investigation as may be required in order to satisfy itself that the use in question is proper and permissible under international law; and if the warship declines to submit to such investigation, such a refusal (which inevitably suggests that the vessel's proceedings and purpose would not stand investigation) should be met by at least a refusal to allow her to continue to use the shelter of neutrality for her purpose. Any other view would open the door to wholesale infractions of neutral rights and obligations. While a neutral State cannot be expected to do more than employ the means at its disposal for the purpose of such investigation, in this case, those means, although amply sufficient, were not in fact employed. His Majesty's Government cannot but conclude that the action of the Norwegian Government in allowing their attempts at investiga-

⁵ "Miscellaneous No. 6 (1908)," Col. 4175.

tion to be frustrated as they were, and permitting the *Altmark* to proceed as she did, constituted a failure to comply with the obligations of neutrality.

9. There are, moreover, two particular incidents to which His Majesty's Government feel bound to call attention. The first is the discovery that the *Altmark* had been violating the Norwegian Regulations by using her wireless in Norwegian waters. His Majesty's Government consider that when this discovery had been made, it was incumbent upon the Norwegian authorities at least to ascertain the nature of the use which the *Altmark* had been making of her wireless, since the nature of the communications might well have been such as to constitute not merely a breach of the Norwegian Regulations forbidding any transmission at all, but a serious infringement of neutrality which would have called for appropriate action by the Norwegian Government. But no such investigation was made, and the matter was regarded as disposed of by the apology made by the *Altmark's* Commander.⁶

10. The second incident is the permission which must be presumed to have been given to the *Altmark* to pass through the "Bergen defended area." There can be no doubt that the request was made because, while it is possible to avoid the area without leaving territorial waters, the passage in question is, in certain conditions, a dangerous one, and the *Altmark* might have been obliged to leave territorial waters and enter the open sea, in which case she would have been exposed to attack by British forces. It was in order to avoid any such possibility that the *Altmark* desired to pass through an area which is prohibited by the Norwegian Regulations to belligerent warships, and His

⁶ It has since been learned that the telegram addressed to the German Legation in Oslo was at once intercepted by the Norwegian authorities, who therefore knew its contents. It was worded as follows:—

"Werde soeben 1300 Uhr zum zweiten Male vom Norwegischen Zerstörer(n) zum Stoppen aufgefordert, nachdem bereits in drei Fällen Norwegischen Offizieren alle erbetene Auskunft erteilt worden ist. Muss gegen diese meines Erachtens neutralitätswidrige wiederholte Verzögerung energischen Protest erheben."

[Translation]

"Have just been ordered to stop for the second time, at 1300 hours, by a Norwegian destroyer, after Norwegian officers already on three occasions have been given all the information they requested. Must protest energetically against this repeated delay which in my opinion is a breach of neutrality."

This is the telegram which was intercepted by the Norwegian authorities—see last paragraph of Document No. 5.

Majesty's Government cannot but regard the action of the Norwegian Government in granting permission as singularly difficult to justify in the circumstances.

11. For the above reasons His Majesty's Government consider that, irrespective of the question whether the nature and object of the *Altmark's* voyage through Norwegian territorial waters were permissible, the fact that the Norwegian authorities permitted, and, indeed, went out of their way to facilitate, that voyage without making any proper enquiry into its nature and object constituted a definite failure on their part to comply with the obligations of neutrality. It had become plain that, so far as the Norwegian Government were concerned, the *Altmark* would be allowed to effect her object of conveying the British prisoners to Germany through the shelter of Norwegian territorial waters, and His Majesty's Government consider, therefore, that in the circumstances they were fully justified in taking action to prevent that result being achieved, and that they would, indeed, have failed in their duty if they had not done so. I desire to emphasize that the action of His Majesty's ships was confined to the minimum necessary to secure the release of the prisoners; despite the resistance offered, no attempt was made to capture or destroy the *Altmark*, or to make prisoners of the armed guard or crew.

12. Quite apart from the questions whether the Norwegian Government exercised toward the *Altmark* the vigilance which was properly required of them as neutrals, His Majesty's Government desire to deal fully with other aspects of the case. It will be recalled that His Excellency the Norwegian Minister for Foreign Affairs explained in the Storting on the 19th February that, in the view of the Norwegian Government, the *Altmark* in any case had the right to pass through Norwegian territorial waters; and he also stated that "there is nothing in international law prohibiting a belligerent from conveying prisoners through neutral territory if the passage itself is legal"; and I assume, therefore, that this represents the attitude of the Norwegian Government on the question of international law involved.

13. To take the latter statement first, and assuming that the word "territory" is to be regarded as meaning "territorial waters" and not as including land, His Majesty's Government have never contended, and do not now contend, that in all circumstances the presence of prisoners on board a belligerent warship, which is legitimately visiting neutral jurisdiction, imposes on the neutral the duty of taking action such as the release of the prisoners. If a belligerent warship, paying a legitimate visit of not more than 24 hours to a neutral port, has prisoners on board, this does not

in itself impose any obligation upon the neutral Government. If, however, the warship requires special facilities in the neutral port, such as repairs which cannot be executed within 24 hours, different considerations arise, as is shown by the fact that, after the arrival of the *Admiral Graf Spee*, at Montevideo, the Uruguayan Government effected the release of the prisoners (shipmates of those in the *Altmark*) who were on board her. The question is one which must depend on the facts of the particular case, or, in the words of Professor Koht, on the question whether "the passage itself is legal."

14. The Norwegian Government contend that the passage of the *Altmark*, in the circumstances stated above, through hundreds of miles of Norwegian territorial waters was a legitimate operation which they were bound to allow. They consider, in fact, that it was an instance of "the mere passage" ("le simple passage") through neutral territorial waters which, under Article 10 of The Hague Convention XIII, does not compromise the neutrality of the country concerned. From this view His Majesty's Government must emphatically dissent. They have frequently in the past insisted on the "right of innocent passage," and they were themselves the authors, at The Hague Conference of 1907, of the proposal which ultimately took the form of Article 10. But it is an essential element of innocent passage that it should be innocent, and their attitude on this point was expressed by Sir Ernest Satow, the first British delegate at The Hague Conference, when he spoke of "*la liberté de traverser en temps de guerre comme en temps de paix les eaux territoriales.*" "Innocent passage," which it was the object of Article 10 to allow, means passage through such territorial waters as would form part of a ship's normal course from the point of departure to her destination, and in particular through such territorial waters as form part of straits which provide access from one area of the sea to another. It is in this sense that His Majesty's Government have always understood and upheld the "right of innocent passage," and it is in this sense that it is recognised in international law. To regard it otherwise would clearly be to encourage the abuse of neutral jurisdiction. His Majesty's Government accordingly consider that for the reasons given in paragraph 8 above, it is the duty of a neutral, before exercising the liberty which Article 10 allows to permit "le simple passage," to satisfy itself that the passage is in fact of such a nature as to be permissible under that Article.

15. But what was the nature and object of the *Altmark's* passage through Norwegian territorial waters? She was on her way from the South Atlantic to Germany by the north-about

route, and the object of her journey and of her passage through Norwegian waters was to complete with impunity the belligerent operation, which began with the capture of the British seamen and was continued with their conveyance across the Atlantic, by depositing them in Germany as prisoners of war. She had entered Norwegian territorial waters on the 14th February at a point off the Trondhjem Fjord, and on the 16th February she had proceeded through those waters for about 400 miles, and was in all probability proposing to continue her passage through those waters until she reached their southerly limit, more than 200 miles further on. The Norwegian Government will not suggest that the circuitous route taken by the *Altmark* bears any relation whatever to the course normally adopted by shipping proceeding from the Atlantic north-about to Germany. The sole and the admitted object with which the *Altmark* took this highly remarkable course was to conclude her warlike operations under the protection of Norwegian neutrality for a distance of several hundred miles and a period of more than three days, so as to escape the fate which awaited her on the high seas at the hands of the British Fleet; and the importance which she attached to not leaving for one moment the shelter of those waters is illustrated by the incident of her passage through the Bergen defended area.

16. His Majesty's Government most emphatically insist that such a voyage cannot be regarded as one which the *Altmark* was entitled to make, or the Norwegian Government bound to permit, as being an instance of the right of innocent passage which is recognised by international law and permitted under the title of "le simple passage" by Article 10 of The Hague Convention XIII. It could not even be accurately described as an abuse of that right to which it bears no relation whatever. It involves a claim by Germany (who has not scrupled to violate Norwegian neutrality when it suited her purpose to do so) to utilise the entire length of Norwegian territorial waters as and when she pleases, not in the ordinary course of navigation, but as a sort of protected corridor within the shelter of which her warships can complete, under the protection of Norwegian neutrality, the military operations in which they may have been engaged. This is not a claim which Germany is entitled to make or Norway to concede.

17. Your Excellency stated to me that as the *Altmark* did not call at Bergen or at any other Norwegian port or anchorage, no question of a 24 hours' limit arises. This as it stands cannot be regarded as a correct statement of the law, since Article 12 of The Hague Convention XIII expressly forbids belligerent warships "de demeurer dans les ports et rades ou dans les eaux territoriales"

of a neutral Power for more than 24 hours. His Majesty's Government regard the question of passage through territorial waters as governed by Article 10 of the Convention and not by Article 12, and, in their view, the time limit of passage is not the fixed one of 24 hours prescribed by the latter Article but that which results from the very nature of "innocent passage" which I have described in paragraph 14 of the present Note; but Article 12 is at any rate a refutation of the contention that no time limit exists if the ship does not enter a port or anchorage, and the existence of this general prohibition, applicable to both ports and territorial waters, reinforces the view which His Majesty's Government hold as to the nature of the passage which is permitted by Article 10.

18. In this connexion there is one point to which I feel it necessary to refer. On the 19th February His Excellency the Norwegian Minister for Foreign Affairs made a statement in the course of which he said that in the summer of 1939 His Majesty's Government, in making certain enquiries of the Norwegian Government as to the Neutrality Regulations which they had adopted, had emphasized "that warships must have the right to sail in Norwegian territorial waters as long as they desired and without regard to the twenty-four hours' limit." His Majesty's Government are constrained to observe that there is no foundation for this statement. What His Majesty's Government did say, in their memorandum of 23rd May, 1939, was that "they have always maintained, and must continue to maintain, the existence of such a right of entry (*i.e.*, into neutral territorial waters) for purposes of innocent passage." The object of this observation (which was correctly quoted in the statement issued by the Norwegian Foreign Department on the 21st February) was, of course, to maintain the principle of the right of innocent passage to which His Majesty's Government have always attached importance, and on which His Majesty's Government felt that some doubt might possibly be cast by certain provisions of the Norwegian Regulations. I readily accept the statement which your Excellency made to me on the 24th February, that Professor Koht's statement was due to his having relied upon his recollection of the contents of His Majesty's Government's memorandum; but as the statement, which was publicly attributed to His Majesty's Government, was never made by them, and never could have been made by them, since it would have been in direct contradiction of their views as to the right of innocent passage, I think it desirable that the true facts should be placed on record.

19. His Majesty's Government must, therefore, conclude that the use made by the *Altmark* of Norwegian territorial waters was

not a legitimate exercise of the right of innocent passage, and ought not to have been permitted by the Norwegian Government; and that the action of the Norwegian Government in permitting, and, indeed, facilitating, the *Altmark's* operations, and in making no proper enquiry as to the nature and object of those operations, constituted a failure to observe the obligations of neutrality. In the light of the facts and the above considerations, His Majesty's Government feel that they were fully justified in taking the action which in the circumstances they felt compelled to take. I desire to add that while in the above observations I have made no reference to the considerations arising from Norway's membership of the League of Nations, His Majesty's Government reserve their position in this respect.

20. But I do not wish, particularly in view of the friendly relations which have existed for so long between our two seafaring nations, to conclude upon this note. In your communication of the 24th February your Excellency suggested that the difference of opinion between the two Governments might be submitted to arbitration. Should the Norwegian Government feel it necessary to persist in this suggestion, His Majesty's Government would have several observations to make which appear to them to be extremely pertinent. But I venture to hope that, in view of the very full explanation which I have now given of the attitude of His Majesty's Government, the Norwegian Government will not find it necessary to press this suggestion further. I have thought it only proper to state the reasons which lead His Majesty's Government to consider that they have just cause of complaint against the Norwegian Government; but I fully recognise that your Excellency's Government found themselves in a difficult position, and I readily acknowledge, in particular, that they could not have been expected to assume that legitimate enquiries made on their behalf would have been met by shameless mendacity on the part of the German officer concerned. His Majesty's Government have warmly appreciated the fact that the Norwegian Government should have expressed understanding of the feelings of His Majesty's Government at the thought that British prisoners were on board the *Altmark*; and His Majesty's Government for their part are very willing to place on record their regret that they should have had no option but to adopt a course which, although in their opinion fully justified by the circumstances, admittedly involved taking action in Norwegian territorial waters.

21. This being so, I venture to hope that the Norwegian Government, even if they are unable to accept all the contentions which I have put forward, will at any rate be not unwilling to recognise

that this case constitutes a clash not of right and wrong but of two rights; and that they will feel able to agree that, each party having now expressed its point of view, the matter can be allowed to rest where it is without disturbing the traditionally friendly relations between our two countries.

I have, &c.
(Sd.) HALIFAX

PART II

RECENT DEVELOPMENTS IN THE LAW OF THE SEA—DOCUMENTS AND COMMENTARY

PART II

RECENT DEVELOPMENTS IN THE LAW OF THE SEA— DOCUMENTS AND COMMENTARY

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NOTE ON ABBREVIATIONS

The following listing indicates the abbreviations that will be used in citing references of frequent occurrence in the remainder of this volume:

- | | |
|---|--|
| (1) A/ (appropriate
number cited) | United Nations, Reports of the International Law Commission, General Assembly, Official Records. |
| (2) A/CN.4/ (appropriate
number cited) | United Nations, International Law Commission Documents. |
| (3) A.J.I.L.,
A.J.I.L., Supp. | American Journal of International Law and Supplements thereto, by volume and year. |
| (4) B.Y.B. | British Yearbook of International Law, by volume and year. |
| (5) CFR, CFR Supp. | Code of Federal Regulations and Supplements thereto. |
| (6) Cmd. | British Command Papers |
| (7) F.R. | Federal Register |
| (8) I.C.J., Reports | Reports of the Opinions of the International Court of Justice. |
| (9) I.C.J., Pleadings,
1951, U.K.-Norway | International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case (<i>United Kingdom v. Norway</i>), Volumes I-IV, (1951). Each volume is separately paged. |
| (10) I.C.L.Q. | International and Comparative Law Quarterly (1952-), by volume and year. |
| (11) I.L.Q. | International Law Quarterly (1947-51). |
| (12) I Malloy
II Malloy | Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1776-1909, compiled by Malloy. |
| (13) Mouton | M.W. Mouton, "The Continental Shelf", (1952) (The Hague, Martinus Nijhoff). |

- (14) N.W.C.,
I.L. Documents U.S. Naval War College, International Law Documents, by years.
- (15) III Redmond Volume III of compilation by Malloy, 1910-1923, compiled by Redmond.
- (16) Stat. United States Statutes at Large.
- (17) TIAS Treaties and Other International Acts Series, issued singly in pamphlets by the Department of State.
- (18) Treaties in Force A list of Treaties and other International Agreements of the United States in force as of October 31, 1955, issued by the Department of State, Publication No. 6346. The same title, showing status of agreements as of October 31, 1956, has been issued by the State Department as Publication No. 6427. When used herein, it is identified by year and number.
- (19) IV Trenwith Volume IV of the compilations by Malloy and Redmond, 1923-37, compiled by Trenwith.
- (20) U.N. Leg. Series I (1951) United Nations Legislative Series, "Laws and Regulations on the Regime of the High Seas", Volume I, ST/LEG/SER. B/1, 11 January 1951. Volume II, ST/LEG/SER. B/2, 14 December 1951, with the same title, which contains a collection of national legislation dealing with the problem of criminal jurisdiction, will not be referred to in this collection.
- (21) UNTS United Nations Treaty Series.
- (22) U.S. U.S. Supreme Court Reports.
- (23) U.S.C. United States Code.
- (24) U.S.T. United States Treaties and Other International Agreements (volumes published yearly beginning as of January 1, 1950.)

SECTION I

**JUDICIAL AND ARBITRAL
DECISIONS**

SECTION I

JUDICIAL AND ARBITRAL DECISIONS

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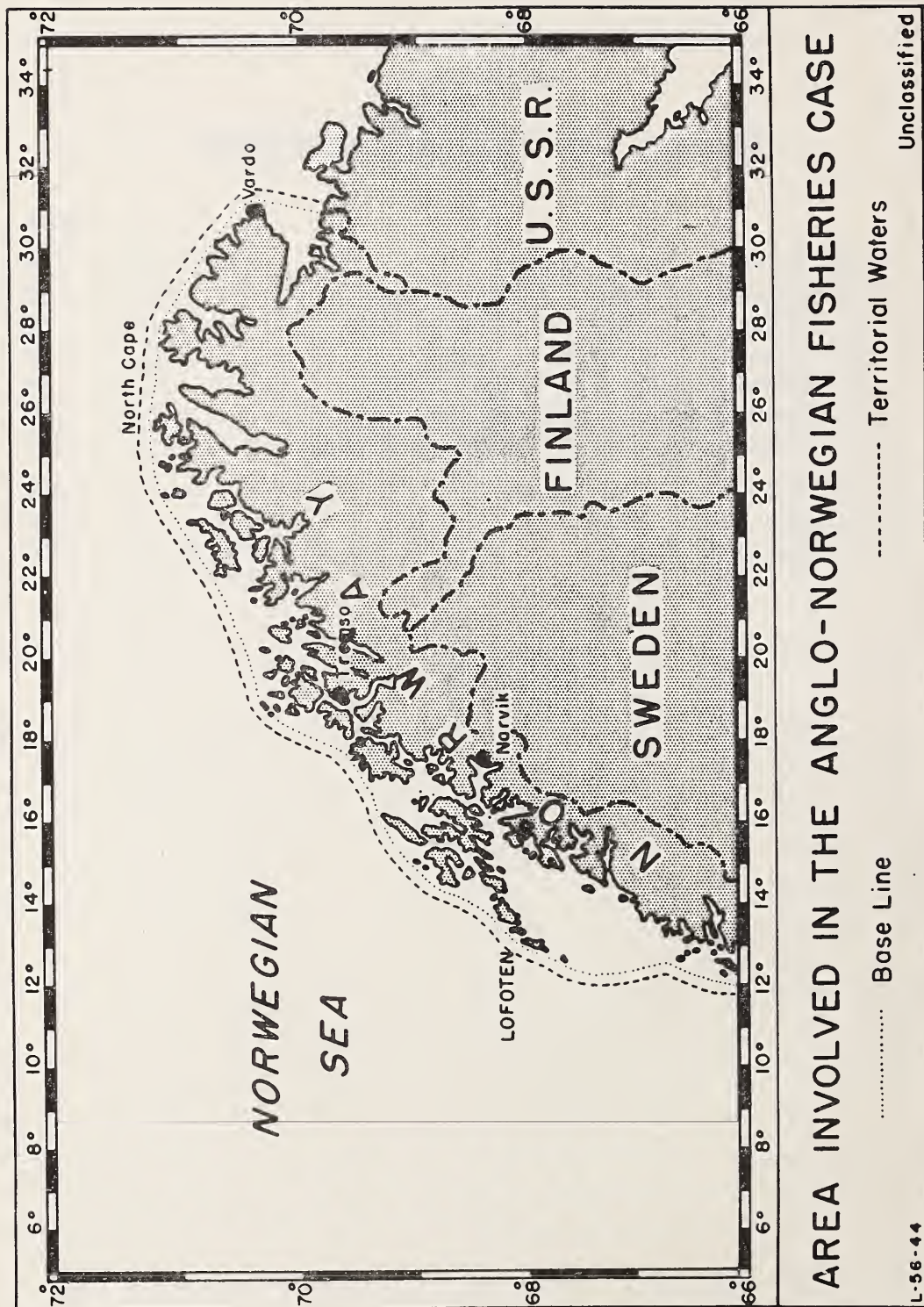


Figure 2.

A. Anglo-Norwegian Fisheries Case

I. Introductory Note to the Fisheries Case

The Norwegian government, by its Decree of July 12, 1935, established the limits of a Norwegian fisheries zone along the coast of Norway north of latitude $66^{\circ} 28.8'$ North. The limits of this zone were measured by perpendiculars drawn from the outer islands in the *skjaergaard*, or belt of islands and rocks along the Norwegian coast and from base lines drawn between these islands, or from base lines drawn between the headlands of certain bays. It was Norway's position that the fisheries zone delimited by this Decree was her territorial sea. On September 28, 1949, the government of the United Kingdom filed with the registry of the International Court of Justice an Application asking that the legality of this delimitation be tested under the principles of international law. That Norway claims a four-mile belt of territorial waters was not an issue in the case. Judgment, rendered by the Court on December 18, 1951, was in favor of the Norwegian position.

Twelve of the Court's fifteen judges participated in the decision. Judges Fabela (Mexico) and Krylov (U.S.S.R.) were absent and Judge Azevedo (Brazil) had recently died. In view of the importance of this case for the law of the sea, there are reproduced herein the Judgment of the Court, the individual concurring opinions of Judge Alvarez (Chile) and Judge Hsu Mo (China), and the dissenting opinion of Judge McNair (United Kingdom). It is regretted that space limitations prevent the reprinting of the dissenting opinion of Judge Read (Canada) as well. In brief summary, it was his opinion that certain of the base lines were contrary to international law, that the Norwegian base-line "system" was contrary to international law, and that the coastline rule was an established rule of international law. In general approach, his views resembled Judge McNair's, although he agreed with the majority of the Court on Indreleia and Vestffjord. He differed also with Judge McNair by expressing the opinion that the ten-mile rule for bays was established international law. Furthermore, he was of the opinion that the United Kingdom had not been shown to have acquiesced in the application of the Norwegian "system." Judge Read's dissenting opinion appears in I.C.J., Reports, 1951, pages 186-206.

Judge Hackworth (U.S.A.) concurred in the Judgment of the Court but recorded that he did so on the basis that Norway had proved a historic title to the disputed areas.

Immediately following this Introductory Note appears a Bibliographical Note summarizing the voluminous discussion this case has generated. Consequently, the following comments will be confined to a few salient points. There can be no question that the decision is one of the most important ever rendered by an international tribunal. Its significance for the law of the sea is evident. It will particularly affect the practice of States with respect to the methods for measuring base lines as well as having a significant impact on the extent of internal and territorial waters. It will also have some bearing on national claims to the continental shelf and fisheries. Even though the decision is not technically a precedent binding in future cases, it has already influenced and will continue to influence in practice the claims of States and the reactions of other States to such claims.

The Court's opinion is brief and not as explicit as would have been desirable in view of the importance of the questions raised. As a composite opinion of judges of varying nationalities and legal training, this is perhaps to be expected. It is clear, however, that the decision adopts a broad test of reasonableness in judging the claims of coastal States to the breadth of their territorial sea and the means adopted by them for measuring the base lines which serve as the boundary between territorial and internal waters. While the Court emphasized that the claims of coastal States are governed by international law, the standards laid down are somewhat indefinite, and are partially subjective in character. Account is taken, for example, of important economic interests of a region's inhabitants, of sufficiently long standing, as a factor along with geographic and historic considerations bearing on the reasonableness of the claim. The limitations on the use of this subjective factor are carefully stated by the International Law Commission in Article 5, Paragraph 1, fourth sentence, and Paragraph 4 of the Commentary thereto, both reprinted, *infra*. While frequent reference is made to the asserted unique character of the Norwegian coast, the decision will inevitably have broader implications.

Thus, the Court's opinion makes clear that the so-called coast-line rule can no longer be regarded as having any universal validity. Neither the three-mile rule nor the breadth of the territorial sea in general were, however, directly at issue in the case. Only future adjudications can delineate the limits of the Court's principles with any certainty. The treatment of the histor-

ical evidence in the opinion of the Court was particularly terse. The ruling of the Court that the United Kingdom had acquiesced in the Norwegian "system" is subject to question. If followed, it will put a heavy burden in the future on States to discover the legislation of other States and to protest promptly if the legislation is objectionable. With the lack of compulsory jurisdiction in international tribunals, this will tend to encourage the growth of disputes without adequate means for resolution. This tendency is already evident in claims that have been made before and since the decision. For example, the claim of Chile-Ecuador-Peru to a maritime zone of 200 miles has been challenged by the United States and other States. The United States has formally proposed that these differences of view be submitted to the International Court of Justice for decision. Chile-Ecuador-Peru, which have not accepted the compulsory jurisdiction of that Court, have not been willing to agree to the United States proposal. Despite the sweep of the Court's decision, there can be little doubt that the decision does not justify such extravagant claims as Chile-Ecuador-Peru and some other States have made. The International Law Commission's 1956 Report, reprinted, *infra*, takes this position in Article 3, Paragraph 2, in stating that international law does not permit an extension of the territorial sea beyond twelve miles.

The concurring opinion of Judge Alvarez may make explicit the rationale of the opinion of the Court. It is probable that it goes beyond the Court in what it would accept in the way of claims by coastal States. It too, however, acknowledges the supremacy of international law and, in invoking the principle of *abus de droit* as a limitation, in essence adopts a very broad standard of reasonableness for judging the validity of coastal State claims.

Despite the criticisms that have been made of various aspects of the Court's opinion, the decision itself has considerable merit. On the particular facts involved, the result reached is understandable and not unreasonable. The United Kingdom case was based on a series of detailed and complex rules for which it was difficult to marshal convincing support in the practice of States. The standard of reasonableness, while vague, is sufficiently precise to serve as a basis for resolution of the conflicting claims of States to the use of the sea. If the international society had reached the stage of development in which legislative and judicial organs comparable to the modern state existed, the standards laid down by the Court would be adequate. Under existing conditions, it will be difficult to resolve the conflicts already present as well as the further disputes apt to be encouraged by the decision.

The possible effect of the decision on claims to internal and

territorial waters has been mentioned. It is generally asserted that national sovereignty is supreme in internal waters. A striking aspect of the *Fisheries* decision is its practical effect, through approval of the straight-line method, in turning large areas of water previously considered as high or territorial seas into internal waters. Does it necessarily follow that there should be no right of innocent passage for normal navigational routes through such internal waters? This question was not decided in the *Fisheries case*. But Article 5, Paragraph 3, of the final Report of the International Law Commission on the Law of the Sea, reprinted, *infra*, provides in such cases that a right of innocent passage shall be recognized if the waters involved have normally been used for international traffic.

The effect of the decision on the rights of belligerents and neutrals in the latter's territorial waters should be noted. Although the controversy concerned the validity of base lines for fishing grounds, the case was argued and decided on the basis of territorial waters. Consequently, if the usual assumption is made that the same limits and rules apply to the wartime situation, the decision could have serious consequences in this aspect of the subject. The possible implications are discussed, *supra*, in Situation I.

2. Bibliographical Note to Fisheries Case

In addition to the official report in *I.C.J. Reports*, 1951, pages 116–206, the Judgment of the Court, with minor omissions, is printed in 46 *A.J.I.L.* (1952), pages 348–370. The written and oral arguments and many documents appear in *I.C.J.—Pleadings, Oral Arguments, Documents, Fisheries Case (United Kingdom v. Norway)* in four volumes. A fifth volume contains maps of the disputed areas in detail, which are marked to show the respective contentions of the parties.

Comment on the case has been voluminous. Selected references to this commentary will be made. Counsel on both sides have been especially active in recording their reactions to the case and the decision. Professor Waldock, of counsel for the United Kingdom, discusses the case at length in 28 *B.Y.B.* (1951), pages 114–171. He concludes his criticism by stating that the Court's views were against the weight of state practice and juristic opinion without adequate explanation, and that disputed issues of fact were decided without referring to the facts adduced in opposition. He criticizes the vagueness of the Court's formula, and regrets its effect in encouraging expansion of inland waters by unilateral claims. Wilberforce, also of counsel for the United Kingdom, emphasizes the

evidentiary problems in the case from the standpoint of the practising lawyer, in 1952 *Transactions of the Grotius Society*, pages 151–168. Johnson, similarly of counsel for the United Kingdom, discusses the opposing contentions and the various opinions in 1 *I.C.L.Q.* (1952), pages 145–180. He regards the decision as not unreasonable if the premise that there was no existing rule of customary law was valid. He criticizes various aspects of the decision, and regrets that the only dissents were by British Commonwealth judges. A note by Johnson on the bearing of the decision on the Tidelands dispute in the United States appears in *Ibid.*, page 213.

Bourquin, counsel for Norway, discusses the case in detail, in 22 *Acta Scandinavica Juris Gentium* 101 *et seq.* (1952). Among other points, he believes the ten-mile rule for bays was the great victim of the decision, and that the implications of this point further enfeebled the three-mile rule for territorial waters, even though it was not at issue. He concedes the dangers of abuse in the economic-interests factor but argues that the Court's limitations on its use provide adequate protection. He stresses the connection of waters to the land as the key to use of the Court's formula for base lines. He defends the Court's decision as based on practice showing customary law under Article 38 of its Statute, and argues that the British position was based on proposed legislative solutions. Moreover, on the merits, the British position sought uniformity in an area where flexibility is essential. He concludes his defense of the Court's position by stressing the safeguards against abuse in the Court's formulation, and that the Court itself in future cases will furnish the requisite protection. Unfortunately, he does not discuss the lack of compulsory jurisdiction, which could easily make this safeguard illusory in practice.

Evenson, retained as an expert for the Norwegian Government in the case, summarizes the contentions of the parties and the opinions in 46 *A.J.I.L.* (1952), pages 609–629. He concludes that the decision throws doubt on the three-mile rule, implicitly accepts the four-mile claim, and was most significant in treating the Indreleia as internal waters. He believes that the decision will permit the extension of the Norwegian "system" to its entire coast, as has in fact been done. See Norway, Section VI, B, 26, *infra*. He does not believe the decision supports the more extreme claims that have been made.

Professor, now Judge, Lauterpacht, criticizes the decision and its effect on international judicial settlement in a letter to *The Times* of London, January 8, 1952, page 7, Cols. 6 and 7. There is

also a brief discussion of the case in *Oppenheim* (8th Ed., 1955, Vol. I, Peace, by Lauterpacht) at pages 488-490. Professor H.A. Smith has discussed the decision in the *Supplement* to the Second Edition (1954) of his *The Law and Custom of the Sea*, at pages 217-222, and in the 1953 *Year Book of World Affairs*, pages 283-307. In the former, he expresses the opinion that the United Kingdom position had little chance of acceptance and that the decision will have wide effect and in fact embodies state practice since 1930. He concludes that the three-mile rule is no longer law and every state is now free to draw its limits subject to the test of reasonableness. In the latter, a more extensive article, he approves the decision and discusses the limitations of international judicial settlement in commenting on the views of Johnson, *supra*, with which he disagrees. Fitzmaurice, Legal Adviser to the British Foreign Office, discusses the broader implications of the decision under various juridical rubrics in 30 *B.Y.B.* (1953), pages 1-70, at pages 8-54. The decision itself is analyzed exhaustively by him in 31 *Ibid.* (1954), pages 371-429. His conclusions on delimitation as determined by the Court appear at pages 426-428. It is too detailed to summarize briefly but in general may be said to draw narrower implications from the decision than Smith, *supra*, and some other commentators have drawn. There is a brief comment by L.C. Green in 15 *Modern Law Review* 373 (July 1952) and by Honig in 102 *Law Journal* 397 (July 1952). The Parliamentary Undersecretary of State for Foreign Affairs stated that the effect of the decision on British practice was being considered, taking account of fisheries conventions to which the United Kingdom is a party. *Parliamentary Debates, House of Lords*, 175 *Official Reports* (No. 25, 1952), Tuesday, February 19, 1952, Cols. 7 and 8. See Section VI, 35, b, 1, *infra*, for text of later official Statement.

Judge Hudson summarizes the opinions and expresses approval of the decision in 46 *A.J.I.L.* (1952), pages 23-30. He states, in part: "* * * The judgment of the Court, supported by a firm majority, takes high place in the annals of international jurisprudence. It paves the way for a much sounder approach to the subject of territorial waters * * * and it clears up many of the confusions * * *." *Ibid.*, page 30. Young comments briefly on the case in 38 *American Bar Association Journal* 243 (March 1952), and concludes that any reasonable moderate delimitation would be valid. The decision is approved in a note in 65 *Harvard Law Review* 1453 (June 1952). A comment stressing the implications of the decision for the United States appears in 4 *Stanford*

Law Review 546–558 (July 1952). McDougal and Schlei cite the decision in support of their standard of reasonableness for the law of the sea in general in 64 *Yale Law Journal* 648 (April 1955) at page 658, note 62, and page 665. Vaughan, 42 *Geographical Review* 302 (1952) summarizes the decision and points out the need that will arise for delineation on maps of exact limits which surface navigators and aviators can use.

Auby approves of the decision in general, although he criticizes the Court's opinion on the acquiescence and notice points. Some of his comments are too sweeping, especially his treatment of the Truman Proclamations, *infra*, Section VI, A, *Journal du Droit International* (Clunet—80th Year—No. 1), commencing on page 24 in French and page 25 in English). Brinton comments on the decision and applies it to the 1951 Egyptian Royal Decree of 15 January 1951 and to the Icelandic and Bulgarian laws in 8 *Revue Egyptienne de Droit International* 103 (1952) at pages 104–112. The Bulgarian, Egyptian, and Icelandic laws, which are discussed, *infra*, Section VI, B, 4, 13, and 18, resemble in various degrees the Norwegian "system". There is a brief comment on the case by the New Zealand Department of External Affairs in 28 *University of New Zealand Law Journal* (July 22, 1952), at page 201. The conclusion is that the rigidity of the freedom of the seas must yield to an orderly regime consistent with the needs of the international community.

3. Judgment (Opinion of the Court)

Present: *President* BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORICIC, DE VISSCHER, Sir Arnold McNAIR, KLAESTAD, BADAWI PASHA, READ, HSU MO; *Registrar* HAMBRO.

In the Fisheries case,
between

the United Kingdom of Great Britain and Northern Ireland,
represented by:

Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign
Office,

as Agent,

assisted by:

The Right Honourable Sir Frank Soskice, K.C., M.P., Attorney-
General,

Professor C.H.M. Waldock, C.M.G., O.B.E., K.C., Chichele Pro-

fessor of Public International Law in the University of Oxford,

Mr. R.O. Wilberforce, Member of the English Bar,

Mr. D.H.N. Johnson, Assistant Legal Advisor, Foreign Office,
as Counsel,

and by:

Commander R.H. Kennedy, O.B.E., R.N. (retired), Hydrographic Department, Admiralty,

Mr. W.H. Evans, Hydrographic Department, Admiralty,

M. Annaeus Schjodt, Jr., of the Norwegian Bar, Legal Adviser to the British Embassy in Oslo.

Mr. W.N. Hanna, Military Branch, Admiralty,

Mr. A.S. Armstrong, Fisheries Department, Ministry of Agriculture and Fisheries,

as expert advisers;

and

the Kingdom of Norway,

represented by:

M. Sven Arntzen, Advocate at the Supreme Court of Norway,
as Agent and Counsel,

assisted by:

M. Maurice Bourquin, Professor at the University of Geneva
and at the Graduate Institute of International Studies,

as Counsel,

and by:

M. Paal Berg, former President of the Supreme Court of Norway,

Mr. C. J. Hambro, President of the Odelsting,

M. Frede Castberg, Professor at the University of Oslo,

M. Lars J. Jorstad, Minister Plenipotentiary,

Captain Chr. Meyer, of the Norwegian Royal Navy,

M. Gunnar Rollefson, Director of the Research Bureau of the Norwegian Department of Fisheries,

M. Reidar Skau, Judge of the Supreme Court of Norway,

M.E.A. Colban, Chief of Division in the Norwegian Royal Ministry for Foreign Affairs,

Captain W. Coucheron-Aamot, of the Norwegian Royal Navy,

M. Jens Evensen, of the Bar of the Norwegian Courts of Appeal,

M. Andre Salomon, Doctor of Law,

as experts,

and by:

M. Sigurd Ekeland, Secretary to the Norwegian Royal Ministry for Foreign Affairs,

as secretary,

THE COURT,

composed as above,

delivers the following Judgment:

On September 28th, 1949, the Government of the United Kingdom of Great Britain and Northern Ireland filed in the Registry an Application instituting proceedings before the Court against the Kingdom of Norway, the subject of the proceedings being the validity or otherwise, under international law, of the lines of delimitation of the Norwegian fisheries zone laid down by the Royal Decree of July 12th, 1935, as amended by a Decree of December 10th, 1937, for that part of Norway which is situated northward of $66^{\circ} 28.8'$ (or $66^{\circ} 28' 48''$) N. latitude. The Application refers to the Declarations by which the United Kingdom and Norway have accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute.

This Application asked the Court

“(a) to declare the principles of international law to be applied in defining the base-lines, by reference to which the Norwegian Government is entitled to delimit a fisheries zone, extending to seaward 4 sea miles from those lines and exclusively reserved for its own nationals, and to define the said base-lines in so far as it appears necessary, in the light of the arguments of the Parties, in order to avoid further legal differences between them;

(b) to award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the Court's decision under (a), the Norwegian Government is entitled to reserve for its nationals.”

Pursuant to Article 40, paragraph 3, of the Statute, the Application was notified to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The Pleadings were filed within the time-limits prescribed by Order of November 9th, 1949, and later extended by Orders of March 29th and October 4th, 1950, and January 10th, 1951. By application of Article 44, paragraph 2, of the Rules of Court, they were communicated to the Governments of Belgium, Canada, Cuba, Iceland, Sweden, the United States of America and Venezuela, at their request and with the authorization of the Court. On September 24th, 1951, the Court, by application of Article 44, paragraph

3, of the Rules, at the instance of the Government of Norway, and with the agreement of the United Kingdom Government, authorized the Pleadings to be made accessible to the public.

The case was ready for hearing on April 30th, 1951, and the opening of the oral proceedings was fixed for September 25th, 1951. Public hearings were held on September 25th, 26th, 27th, 28th and 29th, October 1st, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 17th, 18th, 19th, 20th, 24th, 25th, 26th, 27th and 29th. In the course of the hearings, the Court heard Sir Eric Beckett, Agent, Sir Frank Soskice, Mr. Wilberforce and Professor Waldock, Counsel, on behalf of the United Kingdom Government; and M. Arntzen, Agent and Counsel, and Professor Bourquin, Counsel, on behalf of the Government of Norway. In addition, technical explanations were given on behalf of the United Kingdom Government by Commander Kennedy.

At the end of his argument, the Agent of the United Kingdom Government presented the following submissions:

“The United Kingdom submits that the Court should decide that the maritime limits which Norway is entitled to enforce as against the United Kingdom should be drawn in accordance with the following principles:

(1) That Norway is entitled to a belt of territorial waters of fixed breadth—the breadth cannot, as a maximum, exceed 4 sea miles.

(2) That, in consequence, the outer limit of Norway’s territorial waters must never be more than 4 sea miles from *some* point on the base-line.

(3) That, subject to (4), (9) and (10) below, the base-line must be low-water mark on permanently dry land (which is part of Norwegian territory) or the proper closing line (see (7) below) of Norwegian internal waters.

(4) That, where there is a low-tide elevation situated within 4 sea miles of permanently dry land, or of the proper closing line of Norwegian internal waters, the outer limit of territorial waters may be 4 sea miles from the outer edge (at low tide) of this low-tide elevation. In no other case may a low-tide elevation be taken into account.

(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in

international law, whether the proper entrance to the indentation is more or less than 10 sea miles wide.

(6) That the definition of a bay in international law is a well-marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast.

(7) That, where an area of water is a bay, the principle which determines where the closing line should be drawn, is that the closing line should be drawn between the natural geographical entrance points where the indentation ceases to have the configuration of a bay.

(8) That a legal strait is any geographical strait which connects two portions of the high seas.

(9) That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of a legal strait. Where the maritime belts, drawn from each shore, overlap at each end of the strait, the limit of territorial waters is formed by the outer rims of these two maritime belts. Where, however, the maritime belts so drawn do not overlap, the limit follows the outer rims of each of these two maritime belts, until they intersect with the straight line, joining the natural entrance points of the strait, after which intersection the limit follows that straight line.

(10) That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters, at the south-westerly end of the fjord, is the pecked green line shown on Charts Nos. 8 and 9 of Annex 35 of the Reply.

(11) That Norway, by reason of her historic title to fjords and sunds, is entitled to claim, either as territorial or as internal waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the islands and the mainland, and whether these areas are territorial or internal waters, recourse must be had to Nos. (6) and (8) above, being the definitions of a bay and of a legal strait.

(12) That Norway is not entitled, as against the United Kingdom, to enforce any claim to waters not covered by the preceding principles. As between Norway and the United Kingdom, waters off the coast of Norway north of parallel $66^{\circ} 28.8' \text{ N.}$, which are not Norwegian

by virtue of the above-mentioned principles, are high seas.

(13) That Norway is under an international obligation to pay to the United Kingdom compensation in respect of all the arrests since 16th September, 1948, of British fishing vessels in waters, which are high seas by virtue of the application of the preceding principles."

Later, the Agent of the United Kingdom Government presented the following Conclusions, at the end of his oral reply:

"The United Kingdom submits that the Court should decide that the maritime limits which Norway is entitled to enforce as against the United Kingdom should be drawn in accordance with the following principles:

(1) That Norway is entitled to a belt of territorial waters of fixed breadth—the breadth cannot, as a maximum, exceed 4 sea miles.

(2) That, in consequence, the outer limit of Norway's territorial waters must never be more than 4 sea miles from *some* point on the base-line.

(3) That, subject to Nos. (4), (9) and (10) below, the base-line must be low-water mark on permanently dry land (which is part of Norwegian territory) or the proper closing line (see No. (7) below) of Norwegian internal waters.

(4) That, where there is a low-tide elevation situated within 4 sea miles of permanently dry land, or of the proper closing line of Norwegian internal waters, the outer limit of Norwegian territorial waters may be 4 sea miles from the outer edge (at low tide) of this low-tide elevation. In no other case may a low-tide elevation be taken into account.

(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than 10 sea miles long.

(6) That the definition of a bay in international law is a well-marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast.

(7) That, where an area of water is a bay, the prin-

ciple which determines where the closing line should be drawn, is that the closing line should be drawn between the natural geographical entrance points where the indentation ceases to have the configuration of a bay.

(8) That a legal strait is any geographical strait which connects two portions of the high seas.

(9) (a) That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of legal straits.

(b) Where the maritime belts drawn from each shore overlap at each end of the strait, the limit of territorial waters is formed by the outer rims of these two maritime belts. Where, however, the maritime belts so drawn do not overlap, the limit follows the outer rims of each of these two maritime belts, until they intersect with the straight line, joining the natural entrance points of the strait, after which intersection the limit follows that straight line.

(10) That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters, at the southwesterly end of the fjord, is the pecked green line shown on Charts Nos. 8 and 9 of Annex 35 of the Reply.

(11) That Norway, by reason of her historic title to fjords and sunds (see Nos. (5) and (9) (a) above), is entitled to claim, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, and whether these areas are internal or territorial waters, the principles of Nos. (6), (7), (8) and (9) (b) must be applied to indentations in the island fringe and to indentations between the island fringe and the mainland—those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to be internal waters; and those areas which lie in indentations having the character of legal straits, and within the proper limit thereof, being deemed to be territorial waters.

(12) That Norway is not entitled, as against the United Kingdom, to enforce any claims to waters not covered by the preceding principles. As between Norway and the United Kingdom, waters off the coast of Norway

north of parallel $66^{\circ} 28.8' \text{ N.}$, which are not Norwegian by virtue of the above-mentioned principles, are high seas.

(13) That the Norwegian Royal Decree of 12th July, 1935, is not enforceable against the United Kingdom to the extent that it claims as Norwegian waters (internal or territorial waters) areas of water not covered by Nos. (1)–(11).

(14) That Norway is under an international obligation to pay to the United Kingdom compensation in respect of all the arrests since 16th September, 1948, of British fishing vessels in waters which are high seas by virtue of the application of the preceding principles.

Alternatively to Nos. (1) to (13) (if the Court should decide to determine by its judgment the exact limits of the territorial waters which Norway is entitled to enforce against the United Kingdom), that Norway is not entitled as against the United Kingdom to claim as Norwegian waters any areas of water off the Norwegian coasts north of parallel $66^{\circ} 28.8' \text{ N.}$ which are outside the pecked green line drawn on the charts which form Annex 35 of the Reply.

Alternatively to Nos. (8) to (11) (if the Court should hold that the waters of the Indreleia are Norwegian internal waters), the following are substituted for Nos. (8) to (11):

I. That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters at the southwesterly end of the fjord is a line drawn 4 sea miles seawards of a line joining the Skomvaer lighthouse at Rost to Kalsholmen lighthouse in Tennholmerne until the intersection of the former line with the arcs of circles in the pecked green line shown on Charts 8 and 9 of Annex 35 of the Reply.

II. That Norway, by reason of her historic title to fjords and sunds, is entitled to claim as internal waters the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, the principles of Nos. (6) and (7) above must be applied to the indentations in the island fringe and to the indentations between the island fringe and the mainland—those areas which lie in indentations having the character of bays, and within the proper

closing lines thereof, being deemed to lie between the island fringe and the mainland.”

At the end of his argument, the Norwegian Agent presented, on behalf of his government, the following submissions, which he did not modify in his oral rejoinder:

“Having regard to the fact that the Norwegian Royal Decree of July 12th, 1935, is not inconsistent with the rules of international law binding upon Norway, and

having regard to the fact that Norway possesses, in any event, an historic title to all the waters included within the limits laid down by that decree,

May it please the Court,
in one single judgment,

rejecting all submissions to the contrary,

to adjudge and declare that the delimitation of the fisheries zone fixed by the Norwegian Royal Decree of July 12th, 1935, is not contrary to international law.”

* * *

The facts which led the United Kingdom to bring the case before the Court are briefly as follows.

The historical facts laid before the Court establish that as the result of complaints from the King of Denmark and of Norway, at the beginning of the seventeenth century, British fishermen refrained from fishing in Norwegian coastal waters for a long period, from 1616–1618 until 1906.

In 1906 a few British vessels appeared off the coasts of Eastern Finnmark. From 1908 onwards they returned in greater numbers. These were trawlers equipped with improved and powerful gear. The local population became perturbed, and measures were taken by the Norwegian Government with a view to specifying the limits within which fishing was prohibited to foreigners.

The first incident occurred in 1911 when a British trawler was seized and condemned for having violated these measures. Negotiations ensued between the two Governments. These were interrupted by the war in 1914. From 1922 onwards incidents recurred. Further conversations were initiated in 1924. In 1932, British trawlers, extending the range of their activities, appeared in the sectors off the Norwegian coast west of the North Cape, and the number of warnings and arrests increased. On July 27th, 1933, the United Kingdom Government sent a memorandum to the Norwegian Government complaining that in delimiting the territorial sea the Norwegian authorities had made use of unjustifiable

base-lines. On July 12th, 1935, a Norwegian Royal Decree was enacted delimiting the Norwegian fisheries zone north of $66^{\circ} 28.8'$ North latitude.

The United Kingdom made urgent representations in Oslo in the course of which the question of referring the dispute to the Permanent Court of International Justice was raised. Pending the result of the negotiations, the Norwegian Government made it known that Norwegian fishery patrol vessels would deal leniently with foreign vessels fishing a certain distance within the fishing limits. In 1948, since no agreement had been reached, the Norwegian Government abandoned its lenient enforcement of the 1935 Decree; incidents then became more and more frequent. A considerable number of British trawlers were arrested and condemned. It was then that the United Kingdom Government instituted the present proceedings.

* * *

The Norwegian Royal Decree of July 12th, 1935, concerning the delimitation of the Norwegian fisheries zone sets out in the preamble the considerations on which its provisions are based. In this connection it refers to "well-established national titles of right", "the geographical conditions prevailing on the Norwegian coasts", "the safeguard of the vital interests of the inhabitants of the northernmost parts of the country"; it further relies on the Royal Decrees of February 22nd, 1812, October 16th, 1869, January 5th, 1881, and September 9th, 1889.

The Decree provides that "lines of delimitation towards the high sea of the Norwegian fisheries zone as regards that part of Norway which is situated northward $66^{\circ} 28.8'$ North latitude . . . shall run parallel with straight base-lines drawn between fixed points on the mainland, on islands or rocks, starting from the final point of the boundary line of the Realm in the easternmost part of the Varangerfjord and going as far as Traena in the County of Nordland". An appended schedule indicates the fixed points between which the base-lines are drawn.

The subject of the dispute is clearly indicated under point 8 of the Application instituting proceedings: "The subject of the dispute is the validity or otherwise under international law of the lines of delimitation of the Norwegian fisheries zone laid down by the Royal Decree of 1935 for that part of Norway which is situated northward of $66^{\circ} 28.8'$ North latitude." And further on: ". . . the question at issue between the two Governments is whether the lines prescribed by the Royal Decree of 1935 as the base-lines for the delimitation of the fisheries zone have or have not been drawn in accordance with the applicable rules of international law."

Although the Decree of July 12th, 1935, refers to the Norwegian fisheries zone and does not specifically mention the territorial sea, there can be no doubt that the zone delimited by this Decree is none other than the sea area which Norway considers to be her territorial sea. That is how the Parties argued the question and that is the way in which they submitted it to the Court for decision.

The Submissions presented by the Agent of the Norwegian Government correspond to the subject of the dispute as indicated in the Application.

The propositions formulated by the Agent of the United Kingdom Government at the end of his first speech and revised by him at the end of his oral reply under the heading of "Conclusions" are more complex in character and must be dealt with in detail.

Points 1 and 2 of these "Conclusions" refer to the extent of Norway's territorial sea. This question is not the subject of the present dispute. In fact, the 4-mile limit claimed by Norway was acknowledged by the United Kingdom in the course of the proceedings.

Points 12 and 13 appear to be real Submissions which accord with the United Kingdom's conception of international law as set out under points 3 to 11.

Points 3 to 11 appear to be a set of propositions which, in the form of definitions, principles or rules, purport to justify certain contentions and do not constitute a precise and direct statement of a claim. The subject of the dispute being quite concrete, the Court cannot entertain the suggestion made by the Agent of the United Kingdom Government at the sitting of October 1st, 1951, that the Court should deliver a Judgment which for the moment would confine itself to adjudicating on the definitions, principles or rules stated, a suggestion which, moreover, was objected to by the Agent of the Norwegian Government at the sitting of October 5th, 1951. These are elements which might furnish reasons in support of the Judgment, but cannot constitute the decision. It further follows that even understood in this way, these elements may be taken into account only in so far as they would appear to be relevant for deciding the sole question in dispute, namely, the validity or otherwise under international law of the lines of delimitation laid down by the 1935 Decree.

Point 14, which seeks to secure a decision of principle concerning Norway's obligation to pay to the United Kingdom compensation in respect of all arrests since September 16th, 1948, of British fishing vessels in waters found to be high seas, need not be con-

sidered, since the Parties had agreed to leave this question to subsequent settlement if it should arise.

The claim of the United Kingdom Government is founded on what it regards as the general international law applicable to the delimitation of the Norwegian fisheries zone.

The Norwegian Government does not deny that there exist rules of international law to which this delimitation must conform. It contends that the propositions formulated by the United Kingdom Government in its "Conclusions" do not possess the character attributed to them by that Government. It further relies on its own system of delimitation which it asserts to be in every respect in conformity with the requirements of international law.

The Court will examine in turn these various aspects of the claim of the United Kingdom and of the defence of the Norwegian Government.

* * *

The coastal zone concerned in the dispute is of considerable length. It lies north of latitude $66^{\circ} 28.8' N.$, that is to say, north of the Arctic Circle, and it includes the coast of the mainland of Norway and all the islands, islets, rocks and reefs, known by the name of the "skjaergaard" (literally, rock rampart), together with all Norwegian internal and territorial waters. The coast of the mainland, which, without taking any account of fjords, bays and minor indentations, is over 1,500 kilometres in length, is of a very distinctive configuration. Very broken along its whole length, it constantly opens out into indentations often penetrating for great distances inland: the Porsangerfjord, for instance, penetrates 75 sea miles inland. To the west, the land configuration stretches out into the sea: the large and small islands, mountainous in character, the islets, rocks and reefs, some always above water, others emerging only at low tide, are in truth but an extension of the Norwegian mainland. The number of insular formations, large and small, which make up the "skjaergaard", is estimated by the Norwegian Government to be one hundred and twenty thousand. From the southern extremity of the disputed area to the North Cape, the "skjaergaard" lies along the whole of the coast of the mainland; east of the North Cape, the "skjaergaard" ends, but the coast line continues to be broken by large and deeply indented fjords.

Within the "skjaergaard", almost every island has its large and its small bays; countless arms of the sea, straits, channels and mere waterways serve as a means of communication for the local population which inhabits the islands as it does the mainland. The coast of the mainland does not constitute, as it does in

practically all other countries, a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coast line, is the outer line of the "skjaergaard".

The whole of this region is mountainous. The North Cape, a sheer rock little more than 300 metres high, can be seen from a considerable distance; there are other summits rising to over a thousand metres, so that the Norwegian coast, mainland and "skjaergaard", is visible from far off.

Along the coast are situated comparatively shallow banks, veritable under-water terraces which constitute fishing grounds where fish are particularly abundant; these grounds were known to Norwegian fishermen and exploited by them from time immemorial. Since these banks lay within the range of vision, the most desirable fishing grounds were always located and identified by means of the method of alignments ("*meds*"), at points where two lines drawn between points selected on the coast or on islands intersected.

In these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing.

Such are the realities which must be borne in mind in appraising the validity of the United Kingdom contention that the limits of the Norwegian fisheries zone laid down in the 1935 Decree are contrary to international law.

The Parties being in agreement on the figure of 4 miles for the breadth of the territorial sea, the problem which arises is from what base-line this breadth is to be reckoned. The Conclusions of the United Kingdom are explicit on this point: the base-line must be low-water mark on permanently dry land which is a part of Norwegian territory, or the proper closing line of Norwegian internal waters.

The Court has no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State and clearly shows the character of territorial waters as appurtenant to the land territory. The Court notes that the Parties agree as to this criterion, but that they differ as to its application.

The Parties also agree that in the case of a low-tide elevation (drying rock) the outer edge at low water of this low-tide elevation may be taken into account as a base-point for calculating the breadth of the territorial sea. The Conclusions of the United Kingdom Government add a condition which is not admitted by Norway, namely, that, in order to be taken into account, a drying

rock must be situated within 4 miles of permanently dry land. However, the Court does not consider it necessary to deal with this question, inasmuch as Norway has succeeded in proving, after both Parties had given their interpretation of the charts, that in fact none of the drying rocks used by her as base points is more than 4 miles from permanently dry land.

The Court finds itself obliged to decide whether the relevant low-water mark is that of the mainland or of the "skjaergaard". Since the mainland is bordered in its western sector by the "skjaergaard", which constitutes a whole with the mainland, it is the outer line of the "skjaergaard" which must be taken into account in delimiting the belt of Norwegian territorial waters. This solution is dictated by geographic realities.

Three methods have been contemplated to effect the application of the low-water mark rule. The simplest would appear to be the method of the *tracé parallèle*, which consists of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities. This method may be applied without difficulty to an ordinary coast, which is not too broken. Where a coast is deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the "skjaergaard" along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometric construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions.¹

It is true that the experts of the Second Sub-Committee of the Second Committee of the 1930 Conference for the codification of international law formulated the low-water mark rule somewhat strictly ("following all the sinuosities of the coast"). But they

¹ The last three sentences of this paragraph were somewhat distorted by printing errors and the following translation was later provided by the Registry of the International Court of Justice for the authoritative French text of the judgment. This corrected translation and an explanatory note appear in the *Report of the International Law Commission*, covering its Eighth Session, Supplement No. 9 (A/3159), p. 14.

"[In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be fol-

were at the same time obliged to admit many exceptions relating to bays, islands near the coast, groups of islands. In the present case this method of the *tracé parallèle*, which was invoked against Norway in the Memorial, was abandoned in the written Reply, and later in the oral argument of the Agent of the United Kingdom Government. Consequently, it is no longer relevant to the case. "On the other hand", it is said in the Reply, "the *courbe tangente*—or, in English, 'envelopes of arcs of circles' method is the method which the United Kingdom considers to be the correct one".

The arcs of circles method, which is constantly used for determining the position of a point or object at sea, is a new technique in so far as it is a method for delimiting the territorial sea. This technique was proposed by the United States delegation at the 1930 Conference for the codification of international law. Its purpose is to secure the application of the principle that the belt of territorial waters must follow the line of the coast. It is not obligatory by law, as was admitted by Counsel for the United Kingdom Government in his oral reply. In these circumstances, and although certain of the Conclusions of the United Kingdom are founded on the application of the arcs of circles method, the Court considers that it need not deal with these Conclusions in so far as they are based upon this method.

The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters.

It has been contended, on behalf of the United Kingdom, that Norway may draw straight lines only across bays. The Court is

lowed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast; the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which, within reasonable limits, may depart from the physical line of the coast] . . ."

unable to share this view. If the belt of territorial waters must follow the outer line of the "skjaergaard", and if the method of straight base-lines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay. It is sufficient that they should be situated between the island formations of the "skjaergaard", *inter fauces terrarum*.

The United Kingdom Government concedes that straight lines, regardless of their length, may be used only subject to the conditions set out in point 5 of its Conclusions, as follows:

"Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than 10 sea miles long."

A preliminary remark must be made in respect of this point.

In the opinion of the United Kingdom Government, Norway is entitled, on historic grounds, to claim as internal waters all fjords and sunds which have the character of a bay. She is also entitled on historic grounds to claim as Norwegian territorial waters all the waters of the fjords and sunds which have the character of legal straits (Conclusions, point 9), and, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland (point II and second alternative Conclusion II).

By "historic waters" are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title. The United Kingdom Government refers to the notion of historic titles both in respect of territorial waters and internal waters, considering such titles, in both cases, as derogations from general international law. In its opinion Norway can justify the claim that these waters are territorial or internal on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other States, a kind of *possessio longi temporis*, with the result that her jurisdiction over these waters must now be recognized although it constitutes a derogation from the rules in force. Norwegian sovereignty over these waters would constitute an exception, historic titles justifying situations which would otherwise be in conflict with international law.

As has been said, the United Kingdom Government concedes that Norway is entitled to claim as internal waters all the waters of fjords and sunds which fall within the conception of a bay as defined in international law whether the closing line of the indentation is more or less than ten sea miles long. But the United Kingdom Government concedes this only on the basis of historic title; it must therefore be taken that that Government has not abandoned its contention that the ten-mile rule is to be regarded as a rule of international law.

In these circumstances the Court deems it necessary to point out that although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law.

In any event the ten-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.

The Court now comes to the question of the length of the base-lines drawn across the waters lying between the various formations of the "skjaergaard". Basing itself on the analogy with the alleged general rule of ten miles relating to bays, the United Kingdom Government still maintains on this point that the length of straight lines must not exceed ten miles.

In this connection, the practice of States does not justify the formulation of any general rule of law. The attempts that have been made to subject groups of islands or coastal archipelagoes to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles), have not got beyond the stage of proposals.

Furthermore, apart from any question of limiting the lines to ten miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.

Consequently, the Court is unable to share the view of the United Kingdom Government, that "Norway, in the matter of base-lines, now claims recognition of an exceptional system". As will be shown later, all that the Court can see therein is the application of general international law to a specific case.

The Conclusions of the United Kingdom, points 5 and 9 to 11, refer to waters situated between the base-lines and the Norwegian mainland. The Court is asked to hold that on historic grounds

these waters belong to Norway, but that they are divided into two categories: territorial and internal waters, in accordance with two criteria which the Conclusions regard as well founded in international law, the waters falling within the conception of a bay being deemed to be internal waters, and those having the character of legal straits being deemed to be territorial waters.

As has been conceded by the United Kingdom, the "skjaergaard" constitutes a whole with the Norwegian mainland; the waters between the base-lines of the belt of territorial waters and the mainland are internal waters. However, according to the argument of the United Kingdom a portion of these waters constitutes territorial waters. These are *inter alia* the waters followed by the navigational route known as the Indreleia. It is contended that since these waters have this character, certain consequences arise with regard to the determination of the territorial waters at the end of this water-way considered as a maritime strait.

The Court is bound to observe that the Indreleia is not a strait at all, but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In these circumstances the Court is unable to accept the view that the Indreleia, for the purposes of the present case, has a status different from that of the other waters included in the "skjaergaard".

Thus the Court, confining itself for the moment to the Conclusions of the United Kingdom, finds that the Norwegian Government in fixing the base-lines for the delimitation of the Norwegian fisheries zone by the 1935 Decree has not violated international law.

* * *

It does not at all follow that, in the absence of rules having the technically precise character alleged by the United Kingdom Government, the delimitation undertaken by the Norwegian Government in 1935 is not subject to certain principles which make it possible to judge as to its validity under international law. The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.

In this connection, certain basic considerations inherent in the nature of the territorial sea, bring to light certain criteria which, though not entirely precise, can provide courts with an adequate basis for their decisions, which can be adapted to the diverse facts in question.

Among these considerations, some reference must be made to the close dependence of the territorial sea upon the land domain. It is the land which confers upon the coastal State a right to the waters off its coasts. It follows that while such a State must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements, the drawing of base-lines must not depart to any appreciable extent from the general direction of the coast.

Another fundamental consideration, of particular importance in this case, is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. The real question raised in the choice of base-lines is in effect whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway.

Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage.

Norway puts forward the 1935 Decree as the application of a traditional system of delimitation, a system which she claims to be in complete conformity with international law. The Norwegian Government has referred in this connection to an historic title, the meaning of which was made clear by Counsel for Norway at the sitting on October 12th, 1951: "The Norwegian Government does not rely upon history to justify exceptional rights, to claim areas of sea which the general law would deny; it invokes history, together with other factors, to justify the way in which it applies the general law." This conception of an historic title is in consonance with the Norwegian Government's understanding of the general rules of international law. In its view, these rules of international law take into account the diversity of facts and, therefore, concede that the drawing of base-lines must be adapted to the special conditions obtaining in different regions. In its view, the system of delimitation applied in 1935, a system characterized by the use of straight lines, does not therefore infringe the general law; it is an adaptation rendered necessary by local conditions.

The Court must ascertain precisely what this alleged system of delimitation consists of, what is its effect in law as against the United Kingdom, and whether it was applied by the 1935 Decree in a manner which conformed to international law.

It is common ground between the Parties that on the question of the existence of a Norwegian system, the Royal Decree of February 22nd, 1812, is of cardinal importance. This Decree is in the following terms: "We wish to lay down as a rule that, in all cases when there is a question of determining the limit of our territorial sovereignty at sea, that limit shall be reckoned at the distance of one ordinary sea league from the island or islet farthest from the mainland, not covered by the sea; of which all proper authorities shall be informed by rescript."

This text does not clearly indicate how the base-lines between the islands or islets farthest from the mainland were to be drawn. In particular, it does not say in express terms that the lines must take the form of straight lines drawn between these points. But it may be noted that it was in this way that the 1812 Decree was invariably construed in Norway in the course of the 19th and 20th centuries.

The Decree of October 16th, 1869, relating to the delimitation of Sunnmøre, and the Statement of Reasons for this Decree, are particularly revealing as to the traditional Norwegian conception and the Norwegian construction of the Decree of 1812. It was by reference to the 1812 Decree, and specifically relying upon "the conception" adopted by that Decree, that the Ministry of the Interior justified the drawing of a straight line 26 miles in length between the two outermost points of the "skjaergaard". The Decree of September 9th, 1889, relating to the delimitation of Romsdal and Nordmøre, applied the same method, drawing four straight lines, respectively 14.7 miles, 7 miles, 23.6 miles and 11.6 miles in length.

The 1812 Decree was similarly construed by the Territorial Waters Boundary Commission (Report of February 29th, 1912, pp. 48-49), as it was in the Memorandum of January 3rd, 1929, sent by the Norwegian Government to the Secretary-General of the League of Nations, in which it was said: "The direction laid down by this Decree should be interpreted in the sense that the starting-point for calculating the breadth of the territorial waters should be a line drawn along the 'skjaergaard' between the furthest rocks and, where there is no 'skjaergaard' between the extreme points." The judgment delivered by the Norwegian Supreme Court in 1934 in the *St. Just* case, provided final authority for this interpretation. This conception accords with the geographical characteristics of the Norwegian coast and is not contrary to the principles of international law.

It should, however, be pointed out that whereas the 1812 Decree designated as base-points "the island or islet farthest from the

mainland not covered by the sea", Norwegian governmental practice subsequently interpreted this provision as meaning that the limit was to be reckoned from the outermost islands and islets "not continuously covered by the sea".

The 1812 Decree, although quite general in its terms, had as its immediate object the fixing of the limit applicable for the purposes of maritime neutrality. However, as soon as the Norwegian Government found itself impelled by circumstances to delimit its fisheries zone, it regarded that Decree as laying down principles to be applied for purposes other than neutrality. The Statements of Reasons of October 1st, 1869, December 20th, 1880, and May 24th, 1889, are conclusive on this point. They also show that the delimitation effected in 1869 and in 1889 constituted a reasoned application of a definite system applicable to the whole of the Norwegian coast line, and was not merely legislation of local interest called for by any special requirements. The following passage from the Statement of Reasons of the 1869 Decree may in particular be referred to: "My Ministry assumes that the general rule mentioned above [namely, the four-mile rule], which is recognized by international law for the determination of the extent of a country's territorial waters, must be applied here in such a way that the sea area inside a line drawn parallel to a straight line between the two outermost islands or rocks not covered by the sea, Svinöy to the south and Storholmen to the north, and one geographical league north-west of that straight line, should be considered Norwegian maritime territory."

The 1869 Statement of Reasons brings out all the elements which go to make up what the Norwegian Government describes as its traditional system of delimitation: base-points provided by the islands or islets farthest from the mainland, the use of straight lines joining up these points, the lack of any maximum length for such lines. The judgment of the Norwegian Supreme Court in the *St. Just* case upheld this interpretation and added that the 1812 Decree had never been understood or applied "in such a way as to make the boundary follow the sinuosities of the coast or to cause its position to be determined by means of circles drawn round the points of the 'Skjaergaard' or of the mainland furthest out to sea—a method which it would be very difficult to adopt or to enforce in practice, having regard to the special configuration of this coast." Finally, it is established that, according to the Norwegian system, the base-lines must follow the general direction of the coast, which is in conformity with international law.

Equally significant in this connection is the correspondence which passed between Norway and France between 1869–1870.

On December 21st, 1869, only two months after the promulgation of the Decree of October 16th relating to the delimitation of Sunnmøre, the French Government asked the Norwegian Government for an explanation of this enactment. It did so basing itself upon "the principles of international law". In a second Note dated December 30th of the same year, it pointed out that the distance between the base-points was greater than 10 sea miles, and that the line joining up these points should have been a broken line following the configuration of the coast. In a Note of February 8th, 1870, the Ministry for Foreign Affairs, also dealing with the question from the point of view of international law, replied as follows:

"By the same Note of December 30th, Your Excellency drew my attention to the fixing of the fishery limit in the Sunnmøre Archipelago by a straight line instead of a broken line. According to the view held by your Government, as the distance between the islets of Svinøy and Storholmen is more than 10 sea miles, the fishery limit between these two points should have been a broken line following the configuration of the coast line and nearer to it than the present limit. In spite of the adoption in some treaties of the quite arbitrary distance of 10 sea miles, this distance would not appear to me to have acquired the force of an international law. Still less would it appear to have any foundation in reality: one bay, by reason of the varying formations of the coast and seabed, may have an entirely different character from that of another bay of the same width. It seems to me rather that local conditions and considerations of what is practicable and equitable should be decisive in specific cases. The configuration of our coasts in no way resembles that of the coasts of other European countries, and that fact alone makes the adoption of any absolute rule of universal application impossible in this case.

"I venture to claim that all these reasons militate in favour of the line laid down by the Decree of October 16th. A broken line, conforming closely to the indentations of the coast line between Svinøy and Storholmen, would have resulted in a boundary so involved and so indistinct that it would have been impossible to exercise any supervision over it. . . ."

Language of this kind can only be construed as the considered expression of a legal conception regarded by the Norwegian Government as compatible with international law. And indeed,

the French Government did not pursue the matter. In a Note of July 27th, 1870, it is said that, while maintaining its standpoint with regard to principle, it was prepared to accept the delimitation laid down by the Decree of October 16th, 1869, as resting upon "a practical study of the configuration of the coast line and of the conditions of the inhabitants."

The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States.

The United Kingdom Government has however sought to show that the Norwegian Government has not consistently followed the principles of delimitation which, it claims, form its system, and that it has admitted by implication that some other method would be necessary to comply with international law. The documents to which the Agent of the Government of the United Kingdom principally referred at the hearing on October 20th, 1951, relate to the period between 1906 and 1908, the period in which British trawlers made their first appearance off the Norwegian coast, and which, therefore, merits particular attention.

The United Kingdom Government pointed out that the law of June 2nd, 1906, which prohibited fishing by foreigners, merely forbade fishing in "Norwegian territorial waters", and it deduced from the very general character of this reference that no definite system existed. The Court is unable to accept this interpretation, as the object of the law was to renew the prohibition against fishing and not to undertake a precise delimitation of the territorial sea.

The second document relied upon by the United Kingdom Government is a letter dated March 24th, 1908, from the Minister for Foreign Affairs to the Minister of National Defence. The United Kingdom Government thought that this letter indicated an adherence by Norway to the low-water mark rule contrary to the present Norwegian position. This interpretation cannot be accepted; it rests upon a confusion between the low-water mark rule as understood by the United Kingdom, which requires that all the sinuosities of the coast line at low tide should be followed, and the general practice of selecting the low-tide mark rather than that of the high tide for measuring the extent of the territorial sea.

The third document referred to is a Note, dated November 11th, 1908, from the Norwegian Minister for Foreign Affairs to the French Chargé d'Affaires at Christiania, in reply to a request for

information as to whether Norway had modified the limits of her territorial waters. In it the Minister said: "Interpreting Norwegian regulations in this matter, whilst at the same time conforming to the general rule of the Law of Nations, this Ministry gave its opinion that the distance from the coast should be measured from the low-water mark and that every islet not continuously covered by the sea should be reckoned as a starting-point." The United Kingdom Government argued that by the reference to "the general rule of the Law of Nations", instead of to its own system of delimitation entailing the use of straight lines, and, furthermore, by its statement that "every islet not continuously covered by the sea should be reckoned as a starting-point", the Norwegian Government had completely departed from what it to-day describes as its system.

It must be remembered that the request for information to which the Norwegian Government was replying related not to the use of straight lines, but to the breadth of Norwegian territorial waters. The point of the Norwegian Government's reply was that there had been no modification in the Norwegian legislation. Moreover, it is impossible to rely upon a few words taken from a single note to draw the conclusion that the Norwegian Government had abandoned a position which its earlier official documents had clearly indicated.

The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose.

From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.

Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which

would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it. One cannot indeed consider as raising objections the discussions to which the *Lord Roberts* incident gave rise in 1911, for the controversy which arose in this connection related to two questions, that of the four-mile limit, and that of Norwegian sovereignty over the Varangerfjord, both of which were unconnected with the position of base-lines. It would appear that it was only in its Memorandum of July 27th, 1933, that the United Kingdom made a formal and definite protest on this point.

The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889 relating to the delimitation of Romsdal and Nordmøre which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.

Norway's attitude with regard to the North Sea Fisheries (Police) Convention of 1882 is a further fact which must at once have attracted the attention of Great Britain. There is scarcely any fisheries convention of greater importance to the coastal States of the North Sea or of greater interest to Great Britain. Norway's refusal to adhere to this Convention clearly raised the question of the delimitation of her maritime domain, especially with regard to bays, the question of their delimitation by means of straight lines of which Norway challenged the maximum length adopted in the Convention. Having regard to the fact that a few years before, the delimitation of Sunnmøre by the 1869 Decree had been presented as an application of the Norwegian system, one cannot avoid the conclusion that, from that time on, all the

elements of the problem of Norwegian coastal waters had been clearly stated. The steps subsequently taken by Great Britain to secure Norway's adherence to the Convention clearly show that she was aware of and interested in the question.

The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom.

The Court is thus led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law.

* * *

The question now arises whether the Decree of July 12th, 1935, which in its preamble is expressed to be an application of this method, conforms to it in its drawing of the baselines, or whether, at certain points, it departs from this method to any considerable extent.

The schedule appended to the Decree of July 12th, 1935, indicates the fixed points between which the straight base-lines are drawn. The Court notes that these lines were the result of a careful study initiated by the Norwegian authorities as far back as 1911. The base-lines recommended by the Foreign Affairs Committee of the Storting for the delimitation of the fisheries zone and adopted and made public for the first time by the Decree of July 12th, 1935, are the same as those which the so-called Territorial Waters Boundary Commissions, successively appointed on June 29th, 1911, and July 12th, 1912, had drawn in 1912 for Finnmark and in 1913 for Nordland and Troms. The Court further notes that the 1911 and 1912 Commissions advocated these lines and in so doing constantly referred, as the 1935 Decree itself did, to the traditional system of delimitation adopted by earlier acts and more particularly by the Decrees of 1812, 1869 and 1889.

In the absence of convincing evidence to the contrary, the Court cannot readily find that the lines adopted in these circumstances by the 1935 Decree are not in accordance with the traditional

Norwegian system. However, a purely factual difference arose between the Parties concerning the three following base-points: No. 21 (Vesterfallet i Gaasan), No. 27 (Tokkebaaen) and No. 39 (Nordböen). This difference is now devoid of object. A telegram dated October 19th, 1951, from the Hydrographic Service of Norway to the Agent of the Norwegian Government, which was communicated to the Agent of the United Kingdom Government, has confirmed that these three points are rocks which are not continuously submerged. Since this assertion has not been further disputed by the United Kingdom Government, it may be considered that the use of these rocks as base-points is in conformity with the traditional Norwegian system.

Finally, it has been contended by the United Kingdom Government that certain, at least, of the base-lines adopted by the Decree are, irrespective of whether or not they conform to the Norwegian system, contrary to the principles stated above by the Court as governing any delimitation of the territorial sea. The Court will consider whether, from the point of view of these principles, certain of the base-lines which have been criticized in some detail really are without justification.

The Norwegian Government admits that the base-lines must be drawn in such a way as to respect the general direction of the coast and that they must be drawn in a reasonable manner. The United Kingdom Government contends that certain lines do not follow the general direction of the coast, or do not follow it sufficiently closely, or that they do not respect the natural connection existing between certain sea areas and the land formations separating or surrounding them. For these reasons, it is alleged that the line drawn is contrary to the principles which govern the delimitation of the maritime domain.

The Court observes that these complaints, which assumed a very general scope in the written proceedings, have subsequently been reduced.

The United Kingdom Government has directed its criticism more particularly against two sectors, the delimitation of which they represented as extreme cases of deviation from the general direction of the coast: the sector of Svaerholthavet (between base-points 11 and 12) and that of LoppHAVet (between base-points 20 and 21). The Court will deal with the delimitation of these two sectors from this point of view.

The base-line between points 11 and 12, which is 38.6 sea miles in length, delimits the waters of the Svaerholt lying between Cape Nordkyn and the North Cape. The United Kingdom Government denies that the basin so delimited has the character of a bay. Its

argument is founded on a geographical consideration. In its opinion, the calculation of the basin's penetration inland must stop at the tip of the Svaerholt peninsula (Svaerholtklubben). The penetration inland thus obtained being only 11.5 sea miles, as against 38.6 miles of breadth at the entrance, it is alleged that the basin in question does not have the character of a bay. The Court is unable to share this view. It considers that the basin in question must be contemplated in the light of all the geographical factors involved. The fact that a peninsula juts out and forms two wide fjords, the Laksefjord and the Porsangerfjord, cannot deprive the basin of the character of a bay. It is the distances between the disputed base-line and the most inland point of these fjords, 50 and 75 sea miles respectively, which must be taken into account in appreciating the proportion between the penetration inland and the width at the mouth. The Court concludes that Svaerholthavet has the character of a bay.

The delimitation of the LoppHAVet basin has also been criticized by the United Kingdom. As has been pointed out above, its criticism of the selection of base point No. 21 may be regarded as abandoned. The LoppHAVet basin constitutes an ill-defined geographic whole. It cannot be regarded as having the character of a bay. It is made up of an extensive area of water dotted with large islands which are separated by inlets that terminate in the various fjords. The base-line has been challenged on the ground that it does not respect the general direction of the coast. It should be observed that, however justified the rule in question may be, it is devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the *general* direction of the coast. Therefore, one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large scale chart of this sector alone. In the case in point, the divergence between the base-line and the land formations is not such that it is a distortion of the general direction of the Norwegian coast.

Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon an historic title clearly referable to the waters of LoppHAVet, namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licenses which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaaen or Gjesboene and the fishing grounds

pertaining thereto were regarded as falling exclusively within Norwegian sovereignty. But it may be observed that the fishing grounds here referred to are made up of two banks, one of which, the Indre Gjesboene, is situated between the base-line and the limit reserved for fishing, whereas the other, the Ytre Gjesboene, is situated further to seaward and beyond the fishing limit laid down in the 1935 Decree.

These ancient concessions tend to confirm the Norwegian Government's contention that the fisheries zone reserved before 1812 was in fact much more extensive than the one delimited in 1935. It is suggested that it included all fishing banks from which land was visible, the range of vision being, as is recognized by the United Kingdom Government, the principle of delimitation in force at that time. The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced in support of this contention by the Norwegian Government lend some weight to the idea of the survival of traditional rights reserved to the inhabitants of the Kingdom over fishing grounds included in the 1935 delimitation, particularly in the case of LoppHAVET. Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable.

As to the Vestfjord, after the oral argument, its delimitation no longer presents the importance it had in the early stages of the proceedings. Since the Court has found that the waters of the Indreleia are internal waters, the waters of the Vestfjord, as indeed the waters of all other Norwegian fjords, can only be regarded as internal waters. In these circumstances, whatever difference may still exist between the views of the United Kingdom Government and those of the Norwegian Government on this point, is negligible. It is reduced to the question whether the base-line should be drawn between points 45 and 46 as fixed by the 1935 Decree, or whether the line should terminate at the Kalsholmen lighthouse on Tenholmerne. The Court considers that this question is purely local in character and of secondary importance, and that its settlement should be left to the coastal State.

For these reasons,

THE COURT,

rejecting all submissions to the contrary,

Finds

by ten votes to two,

that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12th 1935, is not contrary to international law; and

by eight votes to four,

that the base-lines fixed by the said Decree in application of this method are not contrary to international law.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this eighteenth day of December, one thousand nine hundred and fifty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and to the Government of the Kingdom of Norway, respectively.

(Signed) BASDEVANT,
President.

(Signed) E. HAMBRO,
Registrar.

Judge HACKWORTH declares that he concurs in the operative part of the Judgment but desires to emphasize that he does so for the reason that he considers that the Norwegian Government has proved the existence of an historic title to the disputed areas of water.

Judges ALVAREZ and HSU MO, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their separate opinions.

Judges Sir Arnold McNAIR and READ, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment statements of their dissenting opinions.

(Initialled) J.B.

(Initialled) E.H.

4. Individual Opinion of Judge Alvarez

[*Translation.*]

I

The United Kingdom has filed with the International Court of Justice an Application in which it challenges the validity of the Norwegian Decree of July 12th, 1935, which delimited the Norwegian fishery zones off a part of the Norwegian coast. It considers that the delimitation so effected is contrary to the precepts of international law and asks the Court to state the principles of inter-

national law applicable for defining the base-lines by reference to which the Norwegian Government is entitled to delimit its fisheries zones.

In the course of the oral proceedings, the United Kingdom Government submitted certain new conclusions, particularly on questions of law, and asked the Court to adjudicate upon these also.

In her Counter-Memorial and Rejoinder, and in her arguments in Court, Norway contended that the delimitation of these fisheries zones established in the 1935 Decree was not in conflict with the precepts of international law and that it corresponded, in any event, to historic rights long possessed by her and which she indicated.

The present litigation is of great importance, not only to the Parties to the case, but also to all other States.

At the beginning of his address to the Court, the Attorney-General said: "It is common ground that this case is not only a very important one to the United Kingdom and to Norway, but that the decision of the Court on it will be of the very greatest importance to the world generally as a precedent, since the Court's decision in this case must contain important pronouncements concerning the rules of international law relating to coastal waters. The fact that so many governments have asked for copies of our Pleadings in this case is evidence that this is the general view."

II

In considering the present case, I propose to follow a method different from that which is customarily adopted, particularly with regard to the law. It consists of bringing to light and retaining the principal facts, then of considering the points of law dominating the whole case and, finally, those which relate to each important question.

The application of this method may, at first sight, appear to be somewhat academic; but it is essentially practical, since it has as its object the furnishing of direct answers to be given on the questions submitted to the Court.

Moreover, this method is called for by reason of the double task which the Court now has: the resolution of cases submitted to it and the development of the law of nations.

It is commonly stated that the present Court is a continuation of the former Court and that consequently it must follow the methods and the jurisprudence of that Court. This is only partly true, for in the interval which elapsed between the operations of the Courts, a World War occurred which involved rapid and profound changes in international life and greatly affected the law of nations.

These changes have underlined the importance of the Court's second function. For it now happens with greater frequency than formerly that, on a given topic, no applicable precepts are to be found, or that those which do exist present lacunae or appear to be obsolete, that is to say, they no longer correspond to the new conditions of the life of peoples. In all such cases, the Court must *develop* the law of nations, that is to say, it must remedy its shortcomings, adapt existing principles to these new conditions and, even if no principles exist, create principles in conformity with such conditions. The Court has already very successfully undertaken the creation of law in a case which will remain famous in the annals of international law (Advisory Opinion of April 11th, 1949, on "Reparation for injuries suffered in the service of the United Nations"). The Court, in this case, can effectively discharge the same task.

The adaptation of the law of nations to the new conditions of international life, which is to-day necessary, is something quite different from the "Restatement" advocated by Anglo-Saxon jurists as a means of ending the crisis in international law, which consists merely of stating the law as it has been established and applied up to the present, without being too much concerned with any changes that it may recently have undergone or which it may undergo in the future.

III

I shall not dwell on a detailed examination of the facts alleged by the Parties nor upon the evidence submitted by the Parties in support of their contentions, because the Judgment of the Court deals with them at length. In the following pages I shall concentrate only on the questions of law raised by the present case.

For centuries, because of the vastness of the sea and the limited relations between States, the use of the sea was subject to no rules; every State could use it as it pleased.

From the end of the 18th century, publicists proclaimed, and the law of nations recognized as necessary for States, the exercise of sovereign powers by States over an area of the sea bordering their shores. The extent of this sea area, which was known as the territorial sea, was first fixed at the range of the contemporary cannon, and later at 3 sea miles. The question indeed was one for the domestic law of each country. Several of the countries of Latin America incorporated provisions relating to this question in their civil codes.

As the result of the growing importance of the question of the territorial sea, a World Conference was convened at The Hague

in 1930 for the purpose of providing rules governing certain of its aspects and to deal with two other matters. This Conference, in which such great hopes had been reposed, did not establish any precept relating to the territorial sea. It made it clear that no well-defined rules existed on this subject, that there were merely a number of conventions between certain States, certain trends and certain usages and practices.

It was contended at the hearings that a great number of States at this Conference had accepted the extent of the territorial sea as being fixed at three sea miles, and had also accepted as established the means of reckoning this breadth; and this assertion was challenged. It is unnecessary to dwell long on this point for, in fact, the Conference, as has been said, did not adopt any provision on the question. Moreover, the conditions of international life have considerably changed since that time; it is therefore probable that the States which in 1930 accepted a breadth of three sea miles would not accept it to-day.

IV

What should be the position adopted by the Court, in these circumstances, to resolve the present dispute?

The Parties, in their Pleadings and in their Oral Arguments, have advanced a number of theories, as well as systems, practices and, indeed, rules which they regarded as constituting international law. The Court thought that it was necessary to take them into consideration. These arguments, in my opinion, marked the beginning of a serious distortion of the case.

In accordance with uniformly accepted doctrine, international judicial tribunals must, in the absence of principles provided by conventions, or of customary principles on a given question, apply the *general principles of law*. This doctrine is expressly confirmed in Article 38 of the Statute of the Court.

It should be observed in this connection that international arbitration is now entering a new phase. It is not enough to stress the general principles of law recognized by civilized nations; regard must also be had, as I have said, to the modifications which these principles may have undergone as a result of the great changes which have occurred in international life, and the principles must be *adapted* to the new conditions of international life; indeed, if no principles exist covering a given question, principles must be *created* to conform to those conditions.

The taking into consideration of these general principles, and their adaptation, are all the more necessary in the present case, since the United Kingdom has asked the Court to declare that

the Norwegian Decree of 1935 is contrary to the principles of international law now in force.

V

What are the principles of international law which the Court must have recourse to and, if necessary, adapt? And what are the principles which it must in reality create?

It should, in the first place, be observed that frequent reference is made to the *principles* of the law of nations, in conventions and in certain of the Judgments of the Permanent Court of International Justice, but it is not said what those principles are nor where they may be found.

Some clarification is therefore necessary on this point.

In the first place, many of the principles, particularly the great principles, have their origin in the legal conscience of peoples (the psychological factor). This conscience results from social and international life; the requirements of this social and international life naturally give rise to certain norms considered necessary to govern the conduct of States *inter se*.

As a result of the present dynamic character of the life of peoples, the principles of the law of nations are continually being created, and they undergo more or less rapid modification as a result of the great changes occurring in that life.

For the principles of law resulting from the juridical conscience of peoples to have any value, they must have a tangible manifestation, that is to say, they must be expressed by authorized bodies.

Up to the present, this juridical conscience of peoples has been reflected in conventions, customs and the opinions of qualified jurists.

But profound changes have occurred in this connection. *Conventions* continue to be a very important form for the expression of the juridical conscience of peoples, but they generally lay down only new principles, as was the case with the Convention on genocide. On the other hand, *customs* tend to disappear as the result of the rapid changes of modern international life; and a new case strongly stated may be sufficient to render obsolete an ancient custom. Customary law, to which such frequent reference is made in the course of the arguments, should therefore be accepted only with prudence.

The further means by which the juridical conscience of peoples may be expressed at the present time are the resolutions of diplomatic assemblies, particularly those of the United Nations and especially the decisions of the International Court of Justice. Ref-

erence must also be made to the recent legislation of certain countries, the resolutions of the great associations devoted to the study of the law of nations, the works of the Codification Commission set up by the United Nations, and finally, the opinions of qualified jurists.

These are the new elements on which the new international law, still in the process of formation, will be founded. This law will, consequently, have a character entirely different from that of traditional or classical international law, which has prevailed to the present time.

VI

Let us now consider the elements by means of which the general principles brought to light are to be adapted to the existing conditions of international life and by means of which new principles are, if necessary, to be created.

The starting point is the fact that, for the traditional *individualistic* régime on which social life has hitherto been founded, there is being substituted more and more a new régime, a régime of *interdependence*, and that, consequently, the *law of social interdependence* is taking the place of the old individualistic law.

The characteristics of this law, so far as international law is concerned, may be stated as follows:

(a) This law governs not merely a *community* of States, but an organized international *society*.

(b) It is not exclusively juridical; it has also aspects which are political, economic, social, psychological, etc. It follows that the traditional distinction between *legal* and *political* questions, and between the domain of law and the domain of politics is considerably modified at the present time.

(c) It is concerned not only with the delimitation of the rights of States but also with harmonizing them.

(d) It particularly takes into account the general interest.

(e) It also takes into account all possible aspects of every case.

(f) It lays down, besides rights, obligations towards international society; and sometimes States are entitled to exercise certain rights only if they have complied with the correlative duties. (Title V of the "Declaration of the Great Principles of Modern International Law" approved by three great associations devoted to the study of the law of nations.)

(g) It condemns *abus de droit*.

(h) It adapts itself to the needs of international life and develops side by side with it.

What are the principles which, in accordance with the foregoing, the Court must bring to light, adapt if necessary, or even create, with regard to the maritime domain and, in particular, the territorial sea?

They may be stated as follows:

1. Having regard to the great variety of the geographical and economic conditions of States, it is not possible to lay down uniform rules, applicable to all, governing the extent of the territorial sea and the way in which it is to be reckoned.

2. Each State may therefore determine the extent of its territorial sea and the way in which it is to be reckoned, provided it does so in a reasonable manner, and that it is capable of exercising supervision over the zone in question and of carrying out the duties imposed by international law, that it does not infringe rights acquired by other States, that it does no harm to general interests and does not constitute an *abus de droit*.

In fixing the breadth of its territorial sea, the State must indicate the reasons, geographic, economic, etc., which provide the justification therefor.

In the light of this principle, it is no longer necessary to debate questions of base-lines, straight lines, closing lines of ten sea miles for bays, etc., as has been done in this case.

Similarly, if a State adopts too great a breadth for its territorial sea, having regard to its land territory and to the needs of its population, or if the base-lines which it indicates appear to be arbitrarily selected, that will constitute an *abus de droit*.

3. States have certain rights over their territorial sea, particularly rights to the fisheries; but they also have certain duties, particularly those of exercising supervision off their coasts, of facilitating navigation by the construction of lighthouses, by the dredging of certain areas of sea, etc.

4. States may alter the extent of the territorial sea which they have fixed, provided that they furnish adequate grounds to justify the change.

5. States may fix a greater or lesser area beyond their territorial sea over which they may reserve for themselves certain rights: customs, police rights, etc.

6. The rights indicated above are of great weight if established by a group of States, and especially by all the States of a continent.

The countries of Latin America have, individually or collectively, reserved wide areas of their coastal waters for specific purposes: the maintenance of neutrality, customs' services, etc., and lastly, for the exploitation of the wealth of the continental shelf.

7. Any State directly concerned may raise an objection to another State's decision as to the extent of its territorial sea or of the area beyond it, if it alleges that the conditions set out above for the determination of these areas have been violated. Disputes arising out of such objections must be resolved in accordance with the provisions of the Charter of the United Nations.

8. Similarly, for the great bays and straits, there can be no uniform rules. The international status of every great bay and strait must be determined by the coastal States directly concerned, having regard to the general interest. The position here must be the same as in the case of the great international rivers: each case must be subject to its own special rules.

At the Conference held in Barcelona in 1921 on navigable waterways, I maintained that it was impossible to lay down general and uniform rules for all international rivers, in view of the great variety of conditions of all sorts obtaining among them; and this point of view was accepted.

In short, in the case of maritime and river routes, it is not possible to contemplate the laying down of uniform rules; the rules must accord with the realities of international life. In place of uniformity of rules it is necessary to have variety; but the general interest must always be taken into account.

9. A principle which must receive special consideration is that relating to prescription. This principle, under the name of *historic rights*, was discussed at length in the course of the hearings.

The concept of prescription in international law is quite different from that which it has in domestic law. As a result of the important part played by force in the formation of States, there is no prescription with regard to their territorial status. The political map of Europe underwent numerous changes in the course of the 19th and 20th centuries; it is to-day very different from what it was before the Great War, without any application of the principle of prescription.

Nevertheless, in some instances, prescription plays a part in international law and it has certain important features. It is recognized, in particular, in the case of the acquisition and the exercise of certain rights.

In support of the effect of prescription in such cases, two very important learned works should be mentioned, which adopt the collective opinion of jurists.

The first of these is the "Declaration of the Great Principles of Modern International Law" which provides, in Article 20: "No

State is entitled to oppose, in its own interests, the making of rules on a question of general interest."

"When, however, it has exercised special rights for a considerable time, account must be taken of this in the making of rules."

The other learned work is the "Draft Rules for the Territorial Sea in Peacetime" adopted by the Institute of International Law at the 1928 Session in Stockholm. Article 2 of this draft provides:

"The breadth of the territorial sea is 3 sea miles. (It was then thought that this was sufficient.)

International usage may justify the recognition of a breadth greater or less than 3 miles."

For prescription to have effect, it is necessary that the rights claimed to be based thereon should be well established, that they should have been uninterruptedly enjoyed and that they should comply with the conditions set out in 2 above.

International law does not lay down any specific duration of time necessary for prescription to have effect. A comparatively recent usage relating to the territorial sea may be of greater effect than an ancient usage insufficiently proved.

10. It is also necessary to pay special attention to another principle which has been much spoken of: the right of States to do everything which is not expressly forbidden by international law. This principle, formerly correct, in the days of absolute sovereignty, is no longer so at the present day: the sovereignty of States is henceforth limited not only by the rights of other States but also by other factors previously indicated, which make up what is called the new international law: the Charter of the United Nations, resolutions passed by the Assembly of the United Nations, the duties of States, the general interests of international society and lastly the prohibition of *abus de droit*.

11. Any State alleging a principle of international law must prove its existence; and one claiming that a principle of international law has been abrogated or has become ineffective and requires to be renewed, must likewise provide proof of this claim.

12. Agreement between the Parties as to the existence of a principle of law, or as to its application, for instance, as to the way in which base-lines determining the extent of the territorial sea are to be selected, etc., cannot have any influence upon the decision of the Court on the question.

13. International law takes precedence over municipal law. Acts committed by a State which violate international law involve the responsibility of that State.

14. A State is not obliged to protest against a violation of

international law, unless it is aware or ought to be aware of this violation; but only the State directly concerned is entitled to refer the matter to the appropriate international body. (Article 39 of the "Declaration of the Great Principles of Modern International Law".)

VII

In accordance with the considerations set out above, I come to the following conclusions upon the questions submitted to the Court:

(1) Norway—like all other States—is entitled, in accordance with the general principles of the law of nations now in existence, to determine not only the breadth of her territorial sea, but also the manner in which it is to be reckoned.

(2) The Norwegian Decree of 1935, which delimited the Norwegian territorial sea, is not contrary to any express provisions of international law. Nor is it contrary to the general principles of international law, because the delimitation is reasonable, it does not infringe rights acquired by other States, it does no harm to general interests and does not constitute an *abus de droit*.

In enacting the Decree of 1935, Norway had in view simply the needs of the population of the areas in question.

(3) In view of the foregoing, it is unnecessary to consider whether or not Norway acquired by prescription a right to lay down a breadth of more than three sea miles for her territorial sea and the way in which its base-lines should be selected.

(4) If Norway is entitled to fix the extent of her territorial sea, as has been said, it is clear that she can prohibit other States from fishing within the limits of that sea without their being entitled to complain of a violation of their rights.

(5) The answer to the contentions of the Parties with regard to the existence of certain precepts of the law of nations which they consider to be in force at the present time has been given in the preceding pages.

(Signed) A. ALVAREZ.

5. Separate Opinion of Judge Hsu Mo

I agree with the finding of the Court that the method of straight lines used in the Norwegian Royal Decree of July 12th, 1935, for the delimitation of the fisheries zone, is not contrary to international law. But I regret that I am unable to share the view of the Court that all the straight base-lines fixed by that Decree are in conformity with the principles of international law.

It is necessary to emphasize the fact that Norway's method

of delimiting the belt of her northern territorial sea by drawing straight lines between point and point, island and island, constitutes a deviation from what I believe to be a general rule of international law, namely, that apart from cases of bays and islands, the belt of territorial sea should be measured, in principle, from the line of the coast at low tide. International law permits, in certain circumstances, deviations from this general rule. Where the deviations are justifiable, they must be recognized by other States. Norway is justified in using the method of straight lines because of her special geographical conditions and her consistent past practice which is acquiesced in by the international community as a whole. But for such physical and historical facts, the method employed by Norway in her Decree of 1935 would have to be considered to be contrary to international law. In examining, therefore, the question of the validity or non-validity of the base-lines actually drawn by Norway, it must be borne in mind that it is not so much the direct application of the general rule as the degree of deviation from the general rule that is to be considered. The question in each case is: how far the line deviates from the configuration of the coast and whether such deviation, under the system which the Court has correctly found Norway to have established, should be recognized as being necessary and reasonable.

The examination of each base-line cannot thus be undertaken in total disregard of the coast line. In whatever way the belt of territorial sea may be determined, it always remains true that the territorial sea owes its existence to land and cannot be completely detached from it. Norway herself recognizes that the base-lines must be drawn in a reasonable manner and must conform to the general direction of the coast.

The expression "to conform to the general direction of the coast", being one of Norway's own adoption and constituting one of the elements of a system established by herself, should not be given a too liberal interpretation, so liberal that the coast line is almost completely ignored. It cannot be interpreted to mean that Norway is at liberty to draw straight lines in any way she pleases provided they do not amount to a deliberate distortion of the general outline of the coast when viewed as a whole. It must be interpreted in the light of the local conditions in each sector with the aid of a relatively large scale chart. If the words "to conform to the general direction of the coast" have any meaning in law at all, they must mean that the base-lines, straight as they are, should follow the configuration of the coast as far as possible and should not unnecessarily and unreasonably traverse great ex-

panses of water, taking no account of land or islands situated within them.

Having examined the different sectors of the territorial sea as delimited by the Decree of 1935, I find two obvious cases in which the base-line cannot be considered to have been justifiably drawn. I refer to the base-line between points 11 and 12, which traverses Svaerholthavet, and the base-line between points 20 and 21, which runs across LoppHAVet.

In the former case, the base-line, being 39 miles long, encloses a large area of the sea as Norwegian internal waters. The question to be determined here is whether the line is to be considered as the closing line of a bay or whether it is simply a line joining one base-point to another. If it is the former, it will be necessary to determine whether the area in question constitutes a bay in international law. In my opinion, the area is a combination of bays, large and small, eight in all, but not a bay in itself. It is not a bay in itself simply because it does not have the shape of a bay. To treat a number of adjacent bays as an entity, thereby completely ignoring their respective closing lines, would result in the creation of an artificial and fictitious bay, which does not fulfil the requirements of a bay, either in the physical or in the legal sense. There is no rule of international law which permits the creation of such kind of bay.

It has been argued by the Agent of the Norwegian Government that the fact that the Svaerholt peninsula protrudes into the waters in question to form the two fjords of Laksefjord and Porsangerfjord cannot deprive these waters of the character of a bay. But geographically and legally, it is precisely the existence of this peninsula that makes the two fjords separate and distinct bays, and it is this fact, coupled with the protrusion of smaller peninsulas on either side of the two fjords, that gives to this part of the coast (the section between points 11 and 12), not the character of a bay, but merely the character of a curvature, a large concavity formed by the closing lines of several independent bays. Nature having created a number of bays, neighbouring but distinct from one another, the littoral State cannot, by the exercise of its sovereignty, turn them into one bay by drawing a long line between two most extreme points.

If the base-line over Svaerholthavet is not the closing line of a bay, it must be just one of the straight lines joining one base-point to another. In that case, I fail to see how that line can be considered to conform to the general direction of the coast. In order to follow the general configuration of the coast, it should take into account at least some of the points which serve as the starting or

terminal points of the closing lines of the bays now enclosed by the long line in question. To leave out all the points on land which interpose between the two extreme points Nos. 11 and 12 and to enclose the whole concavity by drawing one excessively long line is tantamount to using the straight line method to extend seaward the four-mile breadth of the territorial sea. The application of the method in this manner cannot, in my view, be considered as reasonable.

In the case of LoppHAVET, the line connecting points 20 and 21, being 44 miles in length, affects an area of water of several hundred square miles. Norway does not claim this expanse of water to be a bay, and, indeed, by no stretch of the imagination could it be considered as a bay. Since LoppHAVET is not a bay, there does not exist any legal reason for the base-line to skip over two important islands, Loppa and Fuglöy, each of which forms a unit of the "skjaergaard". In ignoring these islands, the base-line makes an obviously excessive deviation from the general direction of the coast. For this reason, it cannot be regarded as being justifiable.

The Agent of the Norwegian Government remarked during the oral proceedings that the basin of LoppHAVET led to the Indreleia which should be considered as Norwegian internal waters. I do not think that the Indreleia has anything to do with the region in question. For the Indreleia, according to the charts furnished by the Norwegian Government, goes through the Kaagsund between the islands of Arnøy and Kaagen and proceeds northward and northeastward between the islands of Loppa and Loppakalven on the one hand and the mainland on the other, finally bending into the Söröysund. It does not at all cut through LoppHAVET outside the islands of Arnøy, Loppa and Sörøy. Consequently, it does not overlap any portion of the immense area in this sector enclosed by the long base-line as Norwegian internal waters.

I have so far examined the question of the validity or otherwise of the two base-lines, the one affecting Svaerholthavet, the other LoppHAVET, exclusively from the aspect of their conformity or non-conformity with the general direction of the coast. It remains to consider whether Norway may base her claim in respect of the two regions on historical grounds. In my opinion, notwithstanding all the documents she has produced, she has not succeeded in establishing any historic title to the waters in question.

In support of her historic title, Norway has relied on habitual fishing by the local people and prohibition of fishing by foreigners. As far as the fishing activities of the coastal inhabitants are concerned, I need only point out that individuals, by undertaking

enterprises on their own initiative, for their own benefit and without any delegation of authority by their Government, cannot confer sovereignty on the State, and this despite the passage of time and the absence of molestation by the people of other countries. As for prohibition by the Norwegian Government of fishing by foreigners, it is undoubtedly a kind of State action which militates in favour of Norway's claim of prescription. But the Rescripts on which she has relied contain one fatal defect: the lack of precision. For they fail to show any precise and well-defined areas of water, in which prohibition was intended to apply and was actually enforced. And precision is vital to any prescriptive claim to areas of water which might otherwise be high seas.

With regard to the licenses for fishing granted on three occasions by the King of Denmark and Norway to Erich Lorch, Lieutenant-Commander in the Dano-Norwegian Navy towards the close of the 17th century, I do not think that this is sufficient to confer historic title on Norway to LoppHAVET. In the first place, the granting by the Danish-Norwegian Sovereign to one of his own subjects of what was at the time believed to be a special privilege can hardly be considered as conclusive evidence of the acquisition of historic title to LoppHAVET vis-à-vis all foreign States. In the second place, the concessions were limited to waters near certain rocks and did not cover the whole area of LoppHAVET. Lastly, there is no evidence to show that the concessions were exploited to the exclusion of participation by all foreigners for a period sufficiently long to enable the Norwegian Government to derive prescriptive rights to LoppHAVET.

My conclusion is therefore that neither by the test of conformity with the general direction of the coast, nor on historical grounds, can the two base-lines drawn across SvaerholthAVET and LoppHAVET, respectively, be considered as being justifiable under the principles of international law.

(Signed) Hsu Mo.

6. Dissenting Opinion of Sir Arnold McNair

In this case the Court has to decide whether certain areas of water off the coast of Norway are high seas or Norwegian waters, either territorial or internal. If they are high seas, then foreign fisherman are authorized to fish there. If they are Norwegian waters, then foreign fishermen have no right to fish there except with the permission of Norway. I have every sympathy with the small inshore fisherman who feels that his livelihood is being threatened by more powerfully equipped competitors, especially when those competitors are foreigners; but the issues raised in

this case concern the line dividing Norwegian waters from the high seas, and those are issues which can only be decided on a basis of law.

* * *

The preamble and the executive parts of the Decree of 1935 are as follows:

“On the basis of well-established national titles of right;

by reason of the geographical conditions prevailing on the Norwegian coasts;

in safeguard of the vital interests of the inhabitants of the northernmost parts of the country;

and in accordance with the Royal Decrees of the 22nd February, 1812, and 16th October, 1869, the 5th January, 1881, and the 9th September, 1889,

are hereby established lines of delimitation towards the high sea of the Norwegian fisheries zone as regards that part of Norway which is situated northward of 66° 28.8' North latitude.

These lines of delimitation shall run parallel with straight base-lines drawn between fixed points on the mainland, on islands or rocks, starting from the final point of the boundary line of the Realm in the easternmost part of Varangerfjorden and going as far as Traena in the County of Nordland.

The fixed points between which the base-lines shall be drawn are indicated in detail in a schedule annexed to this Decree.”

[Schedule]

Mr. Arntzen, the Norwegian Agent and Counsel, told the Court (October 5th) that:

“The Decree of 1935 is founded on the following principles: the Norwegian territorial zone is four sea-miles in breadth. It is measured from straight lines which conform to the general direction of the coast and are drawn between the outermost islands, islets and reefs in such a way as never to lose sight of the land.”

Although the Decree of 1935 does not use the expression “territorial sea” or “waters” or “zone”, it cannot be denied that the present dispute relates to the Norwegian territorial sea. The Judgment of the Court is emphatic on this point. The same point emerges clearly from the United Kingdom’s Application institut-

ing the proceedings and was insisted upon in the Norwegian written and oral argument on numerous occasions. Thus, on October 9th, the Norwegian Counsel, Professor Bourquin, said:

“What is the subject of the dispute? It relates to the base-lines—that is to say, to the lines from which the four miles of the Norwegian territorial sea are to be reckoned. . . .”

And again, in his oral reply, he said on October 25th:

“What [Norway] claims—apart from her historic title—is that the limits imposed by international law with regard to the delimitation of her maritime territory have not been infringed by the 1935 Decree and that this Decree can therefore be set up as against the United Kingdom without any necessity for any special acquiescence on the part of the United Kingdom.”

One thing this dispute clearly is not. It is not a question of the right of a maritime State to declare the existence of a contiguous zone beyond its territorial waters, in which zone it proposes to take measures for the conservation of stocks of fish. An illustration of this is to be found in President Truman’s “Proclamation with respect to Coastal Fisheries in certain areas of the High Seas, dated September 28th, 1945” (*American Journal of International Law*, Vol. 40, 1946, Official Documents, p. 46); it will suffice to quote the following statement:

“The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.”

That is not this case, for here the question is whether certain disputed areas of sea water are parts of the high seas or parts of the territorial or internal waters of the coastal State.

In the course of the proceedings in the case, the United Kingdom has made certain admissions or concessions which can be summarized as follows:

(a) that for the purposes of this case Norway is entitled to a four-mile limit;

(b) that the waters of the fjords and sunds (including the Varangerfjord and Vestfjord) which fall within the conception of a bay, are, subject to a minor point affecting the status of the Vestfjord which I do not propose to discuss, Norwegian internal waters; and

(c) that (as defined in the Conclusions of the United Kingdom) the waters lying between the island fringe and the mainland are Norwegian waters, either territorial or internal.

The Parties are also in conflict upon another minor point, namely, the status of the waters in certain portions of Indreleia, about which I do not propose to say anything.

* * *

I shall now summarize the relevant part of the law of territorial waters as I understand it:

(a) To every State whose land territory is at any place washed by the sea, international law attaches a corresponding portion of maritime territory consisting of what the law calls territorial waters (and in some cases national waters in addition). International law does not say to a State: "You are entitled to claim territorial waters if you want them." No maritime State can refuse them. International law imposes upon a maritime State certain obligations and confers upon it certain rights arising out of the sovereignty which it exercises over its maritime territory. The possession of this territory is not optional, not dependent upon the will of the State, but compulsory.

(b) While the actual delimitation of the frontiers of territorial waters lies within the competence of each State because each State knows its own coast best, yet the principles followed in carrying out this delimitation are within the domain of law and not within the discretion of each State. As the Supreme Court of the United States said in 1946 in the *United States v. State of California*, 332 U.S. 19, 35:

"The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And in so far as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shore and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units." (Cited and re-affirmed in 1950 in *United States v. State of Texas*, 339 U.S. 707, 718.)

(c) The method of delimiting territorial waters is an objective one and, while the coastal State is free to make minor adjustments in its maritime frontier when required in the interests of clarity and its practical object, it is not authorized by the law to manipulate its maritime frontier in order to give effect to its economic and other social interests. There is an overwhelming consensus of opinion amongst maritime States to the effect that the base-line of territorial waters, whatever their extent may be, is a line which follows the coast-line along low-water mark and not a series of imaginary lines drawn by the coastal State for the purpose of giving effect, even within reasonable limits, to its economic and other social interests and to other subjective factors.

In 1894 Bonfils (*Droit international public*, Sec. 491) described *la mer juridictionnelle ou littorale*, as:

“la bande de l’océan qui entoure et enceint les côtes du territoire continental ou insulaire et sur laquelle l’État peut, du rivage que baignent les eaux de cette mer, faire respecter sa puissance”.

(d) The calculation of the extent of territorial waters from the land is the normal and natural thing to do; its calculation from a line drawn on the water is abnormal and requires justification, for instance, by showing that the line drawn on the water is drawn from the terminal line of internal waters in a closed bay or an historic bay or a river mouth, which will be dealt with later. One must not lose sight of the practical operation of the limit of territorial waters. It is true that they exist for the benefit of the coastal State and not for that of the foreign mariner approaching them. Nevertheless, if he is to respect them, it is important that their limit should be drawn in such a way that, once he knows how many miles the coastal State claims, he should—whether he is a fisherman or the commander of a belligerent vessel in time of war—be able to keep out of them by following ordinary maritime practice in taking cross-bearings from points on the coast, whenever it is visible, or in some other way. This practical aspect of the matter is confirmed by the practice of Prize Courts in seeking to ascertain whether a prize has been captured within neutral territorial waters or on the high seas; see, for instance, *The Anne* (1818) *Prize Cases in the United States Supreme Court*, page 1012; *The Heina* (1915), Fauchille, *Jurisprudence française en matière de prises*, I, page 119; II, page 409, a Norwegian ship captured by a French cruiser in 1914 at a point four miles and five-sixths from an island forming part of the Danish Antilles; and

by decisions upon illegal fishing within territorial waters, e.g. *Ship May v. The King*, Canada Law Reports, Supreme Court, 1931, page 374, or upon other illegal entry into territorial waters, *The Ship "Queen City" v. The King*, *ibid.*, page 387.

(e) Reference should also be made to the statement in the Report on Territorial Waters approved by the League Codification Committee in 1927 for transmission to governments for their comments, particularly page 37 of League document C.196.M.70.1927.V., where, after referring to what it calls the seaward limit of the territorial sea, the Report continues:

"Mention should also be made of the line which limits the rights of dominion of the riparian State on the landward side. This question is much simpler. The general practice of the States, all projects of codification and the prevailing doctrine agree in considering that this line should be low-water mark along the whole of the coast."

(f) In 1928 and 1929 replies were sent by a number of governments to the questions put to them by the Committee of Five which made the final preparations for the Hague Codification Conference of 1930 (League of Nations, C.74.M.39.1929.V., pp. 35 *et seq.*).

As I understand these replies—the language is not always absolutely plain—seventeen governments declared themselves in favour of the view that the base-line of territorial waters is a line which follows the coast-line along low-water mark and against the view that the base-line consists of a series of lines connecting the outermost points of the mainland and islands. The following Governments took the latter view: Norway, Sweden, Poland, Soviet Russia and, probably, Latvia. (In this respect my analysis corresponds closely to that of paragraph 298 of the Counter-Memorial.)

It may be added that Poland had recovered sovereignty over her maritime territory only eleven years before, after an interval of more than a century, and that Latvia became a State only in 1918. All the States parties to the North Sea Fisheries Convention of 1882, Belgium, Denmark, France, Germany, Great Britain and the Netherlands, as I understand their replies, accepted the rule of low-water mark following the line of the coast; so also did the United States of America. Governments are not prone to understate their claims.

(g) It is also instructive to notice the Danish reply because Denmark was, with Norway, the joint author of the Royal Decree of 1812, on which the Norwegian Decree of 1935 purports to be

based, and Denmark told the League of Nations Committee that the Decree of 1812 was still in force in Denmark. The Danish reply states that:

“Paragraph 2 of Article 3 of the regulations introduced by Royal Decree of January 19th, 1927, concerning the admission of war-vessels belonging to foreign Powers to Danish ports and territorial waters in time of peace, contains the following clause:

‘Danish internal waters comprise, in addition to the ports, entrances of ports, roadsteads, bays and firths, the waters situated between, and on the shoreward side of, islands, islets and reefs, which are not permanently submerged.’

(Quotation from Decree of 1927 ends.)

“Along the coast the low-water mark is taken as a base in determining the breadth of the territorial waters. The distance between the coast and the islands is not taken into account, so long as it is less than double the width of the territorial zone.”

(h) But although this rule of the limit following the coast line along low-water mark applies both to straight coasts and to curved and indented coasts, an exception exists in the case of those indentations which possess such a configuration, both as to their depth and as to the width between their headlands, as to constitute landlocked waters, by whatever name they may be called. It is usual and convenient to call them “bays”, but what really matters is not their label but their shape.

A recent recognition of the legal conception of bays is to be found in the reply of the United States of America given in 1949 or 1950 to the International Law Commission, published by the United Nations in Document A/CN.4/19, page 104, of 23rd March, 1950:

“The United States has from the outset taken the position that its territorial waters extend one marine league, or three geographical miles (nearly $3\frac{1}{2}$ English miles) from the shore, with the exception of waters or bays that are so landlocked as to be unquestionably within the jurisdiction of the adjacent State.”

(Then follow a large number of references illustrating this statement.)

There are two kinds of bay in which the maritime belt is measured from a closing line drawn across it between its head-

lands, that is to say, at the point where it ceases to have the configuration of a bay. The first category consists of bays whose headlands are so close that they can really be described as landlocked. According to the strict letter and logic of the law, a closing line should connect headlands whenever the distance between them is no more than double the agreed or admitted width of territorial waters, whatever that may be in the particular case. In practice, a somewhat longer distance between headlands has often been recognized as justifying the closing of a bay. There are a number of treaties that have adopted ten miles, in particular the Anglo-French Convention of 1839, and the North Sea Fisheries Convention of 1882, which was signed and ratified by Germany, Belgium, Denmark, France, Great Britain and the Netherlands. It cannot yet be said that a closing line of ten miles forms part of a rule of customary law, though probably no reasonable objection could be taken to that figure. At any rate Norway is not bound by such a rule. But the fact that there is no agreement upon the figure does not mean that no rule at all exists as to the closing line of curvatures possessing the character of a bay, and that a State can do what it likes with its bays; for the primary rule governing territorial waters is that they form a belt or *bande de mer* following the line of the coast throughout its extent, and if any State alleges that this belt ought not to come inside a particular bay and follow its configuration, then it is the duty of that State to show why that bay forms an exception to this general rule.

The other category of bay whose headlands may be joined for the purpose of fencing off the waters on the landward side as internal waters is the historic bay, and to constitute an historic bay it does not suffice merely to claim a bay as such, though such claims are not uncommon. Evidence is required of a long and consistent assertion of dominion over the bay and of the right to exclude foreign vessels except on permission. The matter was considered by the British Privy Council in the case of *Conception Bay in Newfoundland in Direct United States Cable Company v. Anglo-American Telegraph Company* (1877) 2 Appeal Cases 394. The evidence relied upon in that case as justifying the claim of an historic bay is worth noting. There was a Convention of 1818 between the United States of America and Great Britain which excluded American fishermen from Conception Bay, followed by a British Act of Parliament of 1819, imposing penalties upon "any person" who refused to depart from the bay when required by the British Governor. The Privy Council said:

"It is true that the Convention would only bind the two

nations who were parties to it, and consequently that, though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a State as the United States, the Convention, though weighty, is not decisive. But the Act already referred to goes further" "No stronger assertion of exclusive dominion over these bays could well be framed." [This Act] "is an unequivocal assertion of the British legislature of exclusive dominion over this bay as part of the British territory. And as this assertion of dominion has not been questioned by any nation from 1819 down to 1872, when a fresh Convention was made, this would be very strong in the tribunals of any nation to show that this bay is by prescription part of the exclusive territory of Great Britain. . . ."

Claims to fence off and appropriate areas of the high seas by joining up headlands have been made from time to time, but usually in the case of particular pieces of water and not on the thoroughgoing scale of the Decree of 1935. There is a considerable body of legal authority condemning this practice. This theory—to the effect that the coastal State is at liberty to draw a line connecting headlands on its coast and to claim the waters on the landward side of that line as its own waters—has sometimes been referred to as the "headland theory" or "*la théorie*" or "*la doctrine des caps*".

There are two decisions by an umpire called Bates in arbitrations between the United States of America and the United Kingdom in 1853 or 1854 (Moore's *International Arbitrations*, Vol. 4, pp. 4342–5): the *Washington*, seized while fishing within a line connecting the headlands of the Bay of Fundy, which is 65 to 75 miles wide and 130 to 140 miles long and "has several bays on its coasts", and the *Argus*, seized while fishing 28 miles from the nearest land and within a line connecting two headlands on the north-east side of the island of Cape Breton; I do not know the distance between them. In both cases, the seizures were condemned and compensation was awarded to the owners of the vessels. In the *Washington* the umpire said:

"It was urged on behalf of the British Government that by coasts, bays, etc., is understood an imaginary line, drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the

Bay of Fundy against Americans and others, making the latter a British bay. This doctrine of headlands is new, and has received a proper limit in the Convention between France and Great Britain of August 2nd, 1839, in which 'it is agreed that the distance of three miles fixed as the limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.' "

Then, in 1881, Mr. Evarts, American Secretary of State, sent a despatch to the American representative in Spain which contained the following passage (Moore's *Digest of International Law*, i, p. 719) :

"Whether the line which bounds seaward the three-mile zone follows the indentations of the coast or extends from headland to headland is the question next to be discussed.

The headland theory, as it is called, has been uniformly rejected by our Government, as will be seen from the

 opinions of the Secretaries above referred to. The following additional authorities may be cited on this point:

In the opinion of the umpire of the London Commission of 1853 [I think he refers to the *Washington* or the *Argus*], it was held that: 'It can not be asserted as a general rule, that nations have an exclusive right of fishery over all adjacent waters to a distance of three marine miles beyond an imaginary line drawn from headland to headland.' "

He concluded:

"We may therefore regard it as settled that, so far as concerns the eastern coast of North America, the position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a

distance of three miles, the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign."

And "la théorie des caps" is condemned by Fauchille. *Droit international public*, para. 493 (6), in the words: "Elle ne saurait juridiquement prévaloir: elle est une atteinte manifeste à la liberté des mers."

* * *

I shall now examine the Decree of 1935 and direct attention to the results produced by the "straight base-lines" which it lays down. It is difficult without the visual aid of large-scale charts to convey a correct picture of the base-lines and the outer lines of delimitation established by the Decree of 1935. The area affected begins at Traena on the north-west coast not far from the entrance to Vestfjord and runs round North Cape down to the frontier with Russia near Grense-Jacobseiv, the total length of the outer line being about 560 sea miles without counting fjords and other indentations. There are 48 fixed points—often arbitrarily selected—between which the base-lines are drawn. Twelve of these base-points are located on the mainland or islands, 36 of them on rocks or reefs. Some of the rocks are drying rocks and some permanently above water. The length of the base-lines and the corresponding outer lines varies greatly. At some places, where there are two or more rocks at a turning point, the length of the base-lines may be only a few cables. At other places the length is very great, for instance,

between	5 and	6.....	25 miles
	7 "	8.....	19 "
	8 "	9.....	25 "
	11 "	12.....	39 "
	12 "	13.....	19 "
	18 "	19.....	26½ "
	19 "	20.....	19.6 "
	20 "	21.....	44 "
	21 "	22.....	18 "
	25 "	26.....	19½ "
	27 "	28.....	18 "

I have omitted the base-lines connecting base-points 1 and 2 and base-points 45 and 46, which are respectively 30 and 40 miles, because they are the closing lines of Varangerfjord and Vestfjord, and these fjords, like the others, have been conceded by the United Kingdom to be Norwegian waters, subject to a minor controversy

as to the precise position of the closing line of the latter. I have also omitted mention of all base-lines less than 18 miles.

The base-line connecting base-points 20 and 21 (44 miles) rests for a brief moment upon Vesterfall in Gasan (21), a drying rock eight miles from the nearest island, and then continues, with an almost imperceptible bend, in the same direction for a further 18 miles to base point 22, a drying rock; thus between base-points 20 and 22 we get an almost completely straight line of 62 miles. Again, the base-line which connects base-points 18 and 20, both above-water rocks, runs absolutely straight for 46.1 miles.

In order to illustrate the distance between many parts on the outer lines and the land, I shall take two sectors which I find particularly difficult to reconcile with the ordinary conception of the maritime belt—namely, that comprised by base-points 11 and 12 (39 miles apart), an area sometimes called Svaerholthavet, and that comprised by base-points 20 and 21 (44 miles apart), an area sometimes called LoppHAVet. In each case I propose to proceed along the outer line and take, at intervals of 4 miles, measurements in miles *from the outer line to the nearest mainland or on an island*:

Svaerholthavet: Measurements to mainland or islands from the *outer* line, at intervals of 4 miles proceeding from base-point 11 to base-point 12 are as follows: 4 miles at base-point 11, then $5\frac{1}{3}$, $8\frac{1}{3}$, 11, 13, 12 (or 11 from a lighthouse), 11 (or 9 from a lighthouse), 8, 6, and nearly 5;

LoppHAVet: Measurements to mainland or islands from the *outer* line, at intervals of 4 miles proceeding from 20 to 21, are as follows: 4 miles at base-point 20, then 6, $8\frac{1}{2}$, 12, 16, 16, 18, 17, $14\frac{1}{2}$, $12\frac{1}{2}$ (or 8 from base-point 21, a drying rock), 12 (or 5 from base-point 21).

Moreover, each of these two areas—Svaerholthavet and LoppHAVet—in no sense presents the configuration of a bay and comprises a large number of named and unnamed fjords and sunds which have been admitted by the United Kingdom to be Norwegian internal waters within their proper closing lines. In one part of LoppHAVet the outer line is distant more than 20 miles from the closing line of a fjord. In the opinion of the Court (see p. 141) LoppHAVet “cannot be regarded as having the character of a bay”; and I may refer to an additional circumstance which militates against the opinion that the whole of this large area is Norwegian waters: that is, that according to the (British Admiralty) *Norway Pilot*, Part III, page 607, the approach to the port of Hammerfest through Söröysundet, which runs out of LoppHAVet towards Hammerfest, “is the shortest and, on the

whole, the best entrance to Hammerfest from westward, especially in bad weather"; see *The Alleganean* (Moore, *International Arbitrations*, iv, pp. 4332-4341, "that it can not become the pathway from one nation to another"—as one of the conditions for holding Chesapeake Bay to be a closed historic bay). Another questionable area is that comprised by the lines connecting base-points 24 and 26, totalling 36 miles.

These three illustrations are among the extreme cases. A more normal base-line is that which connects base-points 5 (a point on the island of Reinoy) and 6 (Korsneset, a headland on the mainland); this base-line—25 miles in length—runs in front of Persfjord, Syltefjord and Makkaufjord, all of which have been admitted by the United Kingdom to be Norwegian internal waters, but the line pays no attention to their closing lines; at no place, however, is the distance between the outer line and the land or closing line of a fjord more than about six miles.

I draw particular attention to the fact that many, if not most, of the base-lines of the Decree of 1935 fence off many areas of water which contain fjords or bays, and pay little, if any, attention to their closing lines; in the case of the *Washington*, referred to above, the umpire, in rejecting the claim to treat the Bay of Fundy as a closed bay, twice drew attention to the fact that it comprised other bays within itself: "It has several bays on its coasts", and again he refers to "the imaginary line . . . thus closing all the bays on the shore."

The result of the lines drawn by the Decree is to produce a collection of areas of water, of different shapes and sizes and different lengths and widths, which are far from forming a belt or *bande* of territorial waters as commonly understood. I find it difficult to reconcile such a pattern of territorial waters with the almost universal practice of defining territorial waters in terms of miles—be they three or four or some other number. Why speak of three miles or four miles if a State is at liberty to draw lines which produce a maritime belt that is three or four miles wide at the base-points and hardly anywhere else? Why speak of measuring territorial waters from low-water mark when that occurs at 48 base-points and hardly anywhere else? It is said that this pattern is the inevitable consequence of the configuration of the Norwegian coast, but I shall show later that this is not so.

* * *

Norway has sought to justify the Decree of 1935 on a variety of grounds, of which the principal are the following (A, B, C and D):

(A) That a State has a right to delimit its territorial waters in the manner required to protect its economic and other social

interests. This is a novelty to me. It reveals one of the fundamental issues which divide the Parties, namely, the difference between the subjective and the objective views of the delimitation of territorial waters.

In my opinion the manipulation of the limits of territorial waters for the purpose of protecting economic and other social interests has no justification in law; moreover, the approbation of such a practice would have a dangerous tendency in that it would encourage States to adopt a subjective appreciation of their rights instead of conforming to a common international standard.

* * *

(B) That the pattern of territorial waters resulting from the Decree of 1935 is required by the exceptional character of the Norwegian coast.

Much has been said and written in presenting the Norwegian case for the delimitation made by the Decree of 1935 of the special character of the Norwegian coast, the poverty and barrenness of the land in northern Norway, and the vital importance of fishing to the population, and so forth, and of the skerries and "Skjaergaard", which runs round the south, west and north coasts and ends at North Cape (Norwegian oral argument, 11th October). This plea must be considered in some detail from the point of view both of fact and of law. Norway has no monopoly of indentations or even of skerries. A glance at an atlas will shew that, although Norway has a very long and heavily indented coast-line, there are many countries in the world possessing areas of heavily indented coast-line. It is not necessary to go beyond the British Commonwealth. The coast of Canada is heavily indented in almost every part. Nearly the whole of the west coast of Scotland and much of the west coast of Northern Ireland is heavily indented and bears much resemblance to the Norwegian coast.

Skerry is a word of Norwegian origin which abounds in Scotland, both as "skerry" and as "sgeir" (the Gaelic form). The New Oxford Dictionary and any atlas of Scotland afford many illustrations. From this dictionary I extract two quotations: Scoresby, *Journal of Whale Fishery* (1823), page 373: "The islands, or skerries, which . . . skirt the forbidding coast on the western side of the Hebrides"; W. McIlwraith, *Guide to Wigtownshire* (1875) (in the southwest of Scotland), page 62: "The rocks stretch seaward in rugged ledges and skerries." The following passage occurs in the *Encyclopaedia Britannica* (1947), Volume 20, sub-title "Scotland", page 141: "The Western Highland coast is intersected throughout by long narrow sea-lochs or fjords. The mainland slopes steeply into the sea and is fronted by chains

and groups of islands. . . . The Scottish sea-lochs must be considered in connection with those of western Ireland and Norway. The whole of this north-western coast line of Europe bears witness to recent submergence."

As was demonstrated to the Court by means of charts, in response to a suggestion contained in paragraph 527 of the Counter-Memorial, the north-west coast of Scotland is not only heavily indented but it possesses, in addition, a modest "island fringe", the Outer Hebrides, extending from the Butt of Lewis in a south-westerly direction to Barra Head for a distance of nearly one hundred miles, the southern tip being about thirty-five miles from the Skerryvore lighthouse. At present the British line of territorial waters round this island fringe, inside and outside of it, follows the line of the coast and the islands throughout without difficulty and does not, except for the closing lines of lochs not exceeding ten miles, involve straight base-lines joining the outermost points of the islands. This is also true of the heavily indented and mountainous mainland of the north-west coast of Scotland lying inside of and opposite to the Outer Hebrides.

A further factor that must be borne in mind, in assessing the relevance of the special character of the Norwegian coast, is that not very much of that special character remains after the admissions (referred to above) made by the United Kingdom during the course of the oral proceedings. The main peculiarity that remains is the jagged outer edge of the island fringe or "skjaergaard". In estimating the effect of the "skjaergaard" as a special factor, it must also be remembered that, running north-west, it ends at North Cape, which is near base-point 12.

Another special aspect of the Norwegian coast which has been stressed in the Norwegian argument, and is mentioned in the Judgment of the Court, is its mountainous character; for instance, Professor Bourquin said on October 5th:

"The shore involved in the dispute is an abrupt coast towering high above the level of the sea; that fact is of great importance to our case. It is therefore a coast which can be seen from a long way off. A mariner approaching from the sea catches sight of a mountainous coast, like this of Norway, very soon. From this point of view a coast like this of Norway cannot be compared with a flat coast such as that, for example, of the Netherlands."

The Norwegian argument also repeatedly insists that the base-lines of the Decree of 1935 have been so drawn that the land is visible from every point on the outer line. I am unable to see the

relevance of this point because I am aware of no principle or rule of law which allows a wider belt of territorial waters to a country possessing a mountainous coast, such as Norway, than it does to one possessing a flat coast, such as the Netherlands.

In brief, for the following reasons, I am unable to reconcile the Decree of 1935 with the conception of territorial waters as recognized by international law—

(a) because the delimitation of territorial waters by the Decree of 1935 is inspired, amongst other factors, by the policy of protecting the economic and other social interests of the coastal State;

(b) because, except at the precise 48 base-points, the limit of four miles is measured not from land but from imaginary lines drawn in the sea, which pay little, if any, attention to the closing lines of lawfully enclosed indentations such as fjords, except Varangerfjord and Vestfjord;

(c) because the Decree of 1935, so far from attempting to delimit the belt or *bande* of maritime territory attributed by international law to every coastal State, comprises within its limits areas of constantly varying distances from the outer line to the land and bearing little resemblance to a belt or *bande*;

(d) because the Decree of 1935 ignores the practical need experienced from time to time of ascertaining, in the manner customary amongst mariners, whether a foreign ship is or is not within the limit of territorial waters.

* * *

(C) That the United Kingdom is precluded from objecting to the Norwegian system embodied in the Decree of 1935 by previous acquiescence in the system.

Supposing that so peculiar a system could, in any part of the world and at any period of time, be recognized as a lawful system of the delimitation of territorial waters, the question would arise whether the United Kingdom had precluded herself from objecting to it by acquiescing in it. An answer to that question involves two questions:

When did the dispute arise?

When, if at all, did the United Kingdom Government become aware of this system, or when ought it to have become aware but for its own neglect; in English legal terminology, when did it receive actual or constructive notice of the system?

When did the dispute arise? Three dates require consideration: 1906, 1908 and 1911. I do not think it greatly matters which we take. As for 1906, Chapter IV of the Counter-Memorial is entitled "History of the Dispute since 1906". The Storting Document No.

17/1927 (to be described later) says (p. 122) that "in 1905 English trawlers began to fish in the waters along northern Norway and Russia", and the Counter-Memorial, paragraph 91, states that "British trawlers made their first appearance off the coast of Eastern Finnmark towards 1906". Some apprehension occurred among the local population. A Law of June 2, 1906, prohibiting foreigners from fishing in Norwegian territorial waters, was passed, and "since 1907, fishery protection vessels have been stationed every year in the waters of Northern Norway" (*ibidem*, paragraph 93).

As for 1908, Norwegian Counsel told the Court (October 25) that "as early as 1908 Norway organized its fishery patrol service on the basis of the very lines which were subsequently fixed in the 1935 Decree." It is strange that these lines were not communicated to the United Kingdom in 1908. According to Annex 56 of the Counter-Memorial, a Report made by the General Chief of Staff of the Norwegian Navy,

"The instructions given to the naval fishery protection vessels as early as 1906 specified two forms of action to be taken in regard to trawlers: warning and arrest.

The first warning, after the trawlers had begun to visit our Arctic waters, was given in the summer of 1908 to the British trawler *Golden Sceptre*."

As for 1911, on March 11th of that year, when the British trawler *Lord Roberts* was arrested in Varangerfjord and the master was fined for breach of the Law of 2nd June, 1906, Notes were exchanged between the British and Norwegian Governments and the Norwegian Foreign Minister had an interview with Sir Edward Grey, the British Foreign Minister, in London. At that interview, the Norwegian Minister, M. Irgens, "insisted on the desirability of England not at that moment lodging a written protest" (*ibidem*, paragraph 98 a), but on the 11th July, 1911, the British Government sent a protest to Norway (Counter-Memorial, Annex 35, No. 1), in which they maintained that they had "never recognized the Varanger and the Vest fjords to be territorial waters, nor have they participated in any international agreement for the purpose of conferring the right of jurisdiction beyond the three-mile limit off any part of the Norwegian coasts". On October 13th, 1951, Mr. Arntzen said in the course of his oral argument:

"The Norwegian Government is happy to see the dispute which has lasted so long submitted for the decision

of the International Court of Justice. I think it may be relevant to recall that M. Irgens, the Norwegian Foreign Minister, at the time of his discussions [that is, in 1911] with Sir Edward Grey concerning the *Lord Roberts* incident in 1911, was already speaking of the possibility of arbitration as a solution to the dispute."

In later years many other trawlers were arrested, and the dispute widened, but it was not until during the course of these proceedings that the United Kingdom admitted that the waters of Varangerfjord within the line claimed by Norway were Norwegian waters.

Between the arrest of the *Lord Roberts* in 1911 and May 5th, 1949, sixty-three British and other fishing vessels were arrested for fishing in alleged Norwegian waters, and many others were warned (see Counter-Memorial, Annex 56).

I must now examine the Decrees on which the Decree of 1935 purports to be based and some of which have been mentioned as evidence that the United Kingdom had acquired or ought to have acquired notice of the Norwegian system before the dispute began.

(i) *The Royal Decree of February 22nd, 1812*. The Storting Document No. 17/1927 tells us (pp. 506, 507) that after discussion between the Admiralty and Foreign Office of the Kingdom of Denmark-Norway, it was decided to request the King for a royal resolution and the Chancellery defined the matter to be

"whether the territorial sovereignty, or the point from which the sovereign right of protection is fixed, shall be measured from the mainland or from the extremest skerries".

Thereupon the King of Denmark and of Norway made the Decree, of which a translation will be found on page 134 of the Judgment of the Court. The Decree makes no mention of straight lines between islands or islets, or of connecting headlands of the mainland by any lines at all.

This is the first of the Decrees mentioned in the preamble as the basis of the Decree of 1935, and it has been treated by the Norwegian Agent and Counsel as the basis and the starting-point of a series of Decrees made in the 19th century and of the Decree of 1935—a kind of *Magna Carta*. The Judgment of the Court attributes "cardinal importance" to it. It therefore deserves close examination. For this purpose, I must refer again to Storting Document No. 17/1927, which is a Report made by one section

of the "Enlarged Committee on Foreign Affairs and Constitution of the Norwegian Storting" in April 1927, later translated into English and then printed and published by Sijthoff in Leyden in 1937, under the title of *The Extent of Jurisdiction in Coastal Waters*, by Christopher B.V. Meyer, Captain, Royal Norwegian Navy.

On pages 492 ff., this document passes under review a large number of 17th and 18th-century Decrees and Proclamations, amongst others that of June 9, 1691 (Annex 6, I, to the Counter-Memorial), and another of June 13, 1691 (Annex 6, II) which, it will be noticed, refers to the area between the Naze in Norway and the Jutland Reef. It then refers to the Decree of 1812 and tells us that it was "not in reality intended to be more than a regulation for the actual purpose: prize cases on the southern coasts". Further, on page 507, we are told that the Royal Resolution "was communicated . . . to all the Governors in Denmark and Norway whose jurisdictions border the sea, all the prize courts in Denmark and Norway and the Royal Supreme Admiralty Court". It was communicated "for information" with the additional order: "yet nothing of this must be published in printing".

Page 507 contains the following footnote:

"() N.R.A. Chanc., drafts. As far as is known, the resolution was printed for the first time in 1830 in *Historisk underretning om landvaernet* by J. Chr. Berg. Dr. Raestad states that up to that time it was little known and apparently no appeal was made to it previously, either in Denmark or in Norway."

Then follow several quotations from Dr. Raestad's *Kongens Strømme*, commenting on the expression "in all cases", which should be noted because his interpretation of "in all cases" differs from that about to be quoted from this document, and because Dr. Raestad stated that, though the Decree of 1812 "was intended for neutrality questions", "the one-league limit at that time was the actual limit—at any rate the actual minimum limit—also for other purposes than for neutrality." We are then told (p. 509) that

"in the light of the most recent investigations it seems quite clear that the term 'in all cases' only means 'in all prize cases'. The Resolution of 22nd February 1812, only completed the foregoing neutrality rescripts by deciding the question which was left open in 1759: whether the league should be measured from *terra firma* or from

the appurtenant skerries, etc. The one-league limit of 1812 had, therefore, no greater scope than the one-league limit mentioned in the previous Royal Resolutions of the 18th century, that is to say, it applied only to neutrality questions, and was laid down only for the guidance of national authorities, not of foreign Powers."

The relevance of these passages is that they shew:

(a) that the Decree of 1812 was little known for some 18 years;
 (b) that it was intended for administrative purposes and not for the guidance of foreign States;

(c) that, in the opinion of some people, it only applied to prize cases and even then, according to this document, only to prize cases on the southern coasts. On page 510 the Report speaks of "the prize case rule of 22nd February, 1812".

It is clear that between 1869 and 1935 "the prize case rule of 22nd February, 1812" was acquiring a wider connotation, as we shall now see.

It does not matter whether the views expressed in the Storting Document No. 17/1927 as to the meaning of the Royal Decree of 1812 are right or wrong. What is important from the point of view of the alleged notoriety of the Norwegian system is that such views as to the true import of the Decree of 1812 and its connection with the Norwegian system could be held by responsible persons in Norway as late as the year 1927.

(ii) The *Les Quatre Frères* incident in 1868. This French fishing boat was turned out of the Vestfjord by the Norwegian authorities. The French Government protested on the ground that the Vestfjord was not part of Norwegian territorial waters and "serves as a passage for navigation towards the North". Correspondence between the two Governments ensued, and the Minister of Foreign Affairs of Norway and Sweden on November 7th, 1868, claimed Vestfjord "as an interior sea", which appears to have closed the incident.

(iii) A Royal Decree of October 16th, 1869, provided

"That a straight line drawn at a distance of 1 geographical league parallel to a straight line running from the islet of Storholmen to the island of Svinöy shall be considered to be the limit of the sea belt for the coast of the Bailiwick of Sunnmøre, within which the fishing shall be exclusively reserved to the inhabitants of the country."

This, according to Professor Bourquin (October 6), was the first application of the Decree of 1812 to fishing. The straight

base-line connecting the two islands above mentioned was 26 miles in length.

The Counter-Memorial contains in Annex 16 a Statement of Reasons submitted by the Minister of the Interior to the Crown dated October 1st, 1869, about which a few very much compressed comments must be made. Firstly, it represents the cry of the small man in the open boat against the big man in the decked boat. It says that the area in question "has of recent years been invaded by a growing number of decked vessels, both Swedish and Norwegian cutters, from which fishing was practised with heavy lines", etc. Apparently the Swedes began it in 1866 and the Norwegians followed suit. Another passage states that the local fishermen "bitterly complained of the fact that intruders on the fishing grounds previously visited exclusively by Norwegians were mainly foreigners—Swedes". The fear was also expressed that fishing boats from other countries, especially France, might soon appear on the fishing banks. Accordingly, the Minister had been asked "to form an opinion on the possibility of claiming them as Norwegian property". (The reference to France was probably prompted by the Vestfjord incident of the previous year which would be fresh in the departmental mind.)

The Statement of Reasons invokes the precedent of the Decree of 1812. In addition, there is a letter of November 1st, 1869 (Annex No. 28 to the Counter-Memorial) from the Norwegian Minister of the Interior to the Swedish Minister of Civil Affairs, informing him of the Decree made on the 16th instant (? ultimo), and it contains the passage: "it has been desired to bring this matter to the notice of the Royal Ministry in order that the latter may publish the information in those Swedish districts from which the fishing fleets set out for the Norwegian coast". (There is no evidence of any notification of the Decree to any other State.) The penultimate sentence in this letter is as follows:

"Moreover, if the fishery in these areas were left open, there is reason to believe that the fishermen of many foreign countries would visit them, with the result of a diminution of the products of the fishery for everybody".

The Decree was a public document. A large part of the Statement of Reasons is quoted in the Norwegian Report of a Commission on the Delimitation of Territorial Waters of 1912, but, so far as I am aware, the Statement of Reasons was not published at the time of making the Decree.

The French Government—probably on the *qui-vive* by reason of the Vestfjord incident of the previous year—became aware of

the Decree of 1869 two months later and a diplomatic correspondence between the two Governments ensued, in which the French Government contended that "the limits for fishing between [Svinöy and Storholmen] should have been a broken line following the configuration of the coast which would have brought it nearer that coast than the present limit." The last item in this correspondence is a Note from the French Chargé d'Affaires at Stockholm to the Foreign Minister of Norway and Sweden, dated July 27, 1870, which referred to "the future consequences that might follow from our adhesion to the principles laid down in the Decree", and stated that "this danger could easily be avoided if it were understood that the limit fixed by the Decree of October 16th does not rest upon a principle of international law, but upon a practical study of the configuration of the coasts and of the conditions of the inhabitants", and offered to recognize the delimitation *de facto* and to join in "a common survey of the coasts to be entrusted to two competent naval officers". It would appear that the French Government wished to protect itself against a *de jure* recognition of principle. Meanwhile, on July 19, the Franco-Prussian war had broken out, and there the matter has rested ever since.

(iv) *A Royal Decree of September 9th, 1889*, extended the limit fixed by the Decree of 1869 northward in front of the districts of Romsdal and Nordmøre by means of a series of four straight lines, connecting islands, totalling about 57 miles, so that the two Decrees of 1869 and 1889 established straight base-lines of a total length of about 83 miles. The Decree of 1889 was also motivated by a Statement of Reasons submitted by the Minister of the Interior to the Crown, which was included in a publication called *Departements-Tidende* of March 9, 1890. This Statement of Reasons, which also refers to the Decree of 1812, indicates the necessity of empowering the Prefect responsible for Nordmøre and Romsdal to make regulations prohibiting fishing boats from lying at anchor at certain points on the fishing grounds during February and March. It makes no reference to foreign vessels.

The question thus arises whether the two Decrees of 1869 and 1889, affecting a total length of maritime frontier of about 83 miles, and connecting islands but not headlands of the mainland, ought to have been regarded by foreign States when they became aware of them, or ought but for default on their part to have become aware, as notice that Norway had adopted a peculiar *system* of delimiting her maritime territory, which in course of time would be described as having been from the outset of universal application throughout the whole coast line amounting (without

taking the sinuosities of the fjords into account) to about 3,400 kilometres (about 1,830 sea-miles), or whether these Decrees could properly be regarded as regulating a purely local, and primarily domestic, situation. I do not see how these two Decrees can be said to have notified to the United Kingdom the existence of a system of straight base-lines applicable to the whole coast. In the course of the oral argument, Counsel for the United Kingdom admitted that the United Kingdom acquiesced in the lines laid down by these Decrees as lines applicable to the areas which they cover.

(v) *A Decree of January 5th, 1881*, prohibited whaling during the first five months of each calendar year

“along the coasts of Finnmark, at a maximum distance of one geographical league from the coast, calculating this distance from the outermost island or islet, which is not covered by the sea. As regards the Varangerfjord, the limit out to sea of the prohibited belt is a straight line, drawn from Cape Kibergnes to the River Grense-Jakobselv. It must thereby be understood, however, that the killing or hunting of whales during the above-mentioned period will also be prohibited beyond that line at distances of less than one geographical league from the coast near Kibergnes.”

Thus, while expressly fixing a straight base-line across the mouth of the Varangerfjord (which is no longer in dispute in this case), the Decree makes no suggestion and gives no indication that it instituted a system of straight base-lines from the outermost points on the mainland and islands and rocks at any other part “along the coasts of Finnmark”. I find it difficult to see how this Decree can be said to have given notice of a Norwegian system of straight base-lines from Traena in the west to the Russian frontier in the east.

(vi) *The 1881 Hague Conference regarding Fisheries in the North Sea resulting in the Convention of 1882*. The Judgment of the Court refers to this incident and draws certain conclusions from it. This Conference was summoned upon the initiative of Great Britain with a view to the signature of a Convention as to policing the fisheries in the North Sea. The following States were represented: Germany, Belgium, Denmark, France, Great Britain, Sweden, Norway, the delegate of the last-named being M.E. Bretteville, Naval Lieutenant and Chief Inspector of Herring Fishery. The intention was that the Convention should operate on the high seas and not in territorial waters, and consequently

it was necessary to define the extent of the territorial waters within the area affected. The procès-verbaux of the meetings are to be found in a British White Paper C. 3238, published in 1882.

The northern limit of the operation of the Convention was fixed by Article 4 at the parallel of the 61st degree of latitude, which is south of the area in dispute in this case.

At the second session of the Conference, the question of Territorial Waters was discussed, and the following statement appears in the procès-verbaux:

“The Norwegian delegate, *M.E. Bretteville*, could not accept the proposal to fix territorial limits at 3 miles, particularly with respect to bays. He was also of opinion that the international police ought not to prejudice the rights which particular Powers might have acquired, and that bays should continue to belong to the State to which they at present belong.”

Strictly speaking, there was no need for the Norwegian delegate to refer to the Decree of 1869 because the Convention deals with the area south of the parallel of the 61st degree of latitude, but if a system of straight base-lines had already been adopted by Norway in 1881 as being of general application all round the coast, it is surprising that he made no reference to it at a Conference at which all the States primarily interested in fishing in the North Sea were represented, and as a result of which all, except Norway and Sweden, accepted the provisions of Article II of the Convention, of which the following is an extract:

“ARTICLE II

“The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

“As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.”

The Convention was eventually signed and ratified by all the States represented except Norway and Sweden.

This incident, to which I attach particular importance, induces me to put two questions:

(a) If a Norwegian system of delimiting territorial waters by means of straight base-lines had been in existence since 1869

(only 12 years earlier), could the Norwegian delegate, the Chief Inspector of Herring Fishery, have found a more suitable opportunity of disclosing its existence than a Conference of Governments interested in fishing in the North Sea? In fact, could he have failed to do so if the system existed, for it would have afforded a conclusive reason for inability to participate in the Convention of 1882?

(b) Could any of the Governments which ratified this Convention, knowing that Norway claimed four miles as the width of territorial waters and claimed her fjords as internal waters, be affected by the abstention of Norway with notice of the existence of a system which one day in the future would disclose long straight base-lines drawn along a stretch of coast line about 560 miles in length (without counting fjords and other indentations), and which is applicable to the whole coast?

* * *

Paragraph 96 of the Counter-Memorial, in discussing the events of the year 1908, states that

“it may be asked why Norway did not from the beginning use force on all her territorial waters to apply the existing laws relating to foreign fishermen”. . . . “In this respect it must be remembered that Norway had but recently acquired a separate diplomatic service, following the dissolution of the union with Sweden in 1905.”

It is possible that this fact may explain the absence of any categorical assertion of the Norwegian system of straight base-lines as a system of universal application along the Norwegian coasts and the notification of that system to foreign States. But even if this is the explanation, it is difficult to see why it should constitute a reason why foreign States should be affected by notice of this system and precluded from protesting against it when it is enforced against them.

* * *

In these circumstances, I do not consider that the United Kingdom was aware, or ought but for default on her part to have become aware, of the existence of a Norwegian system of long straight base-lines connecting outermost points, before this dispute began in 1906 or 1908 or 1911.

* * *

I must refer very briefly to certain incidents occurring after the dispute began, though they have no bearing on the question of acquiescence. Some of them are dealt with in the Judgment of the Court or in other Individual Opinions.

In 1911, the Norwegian Government appointed a "Commission for the Limits of Territorial Waters in Finnmark", which reported on February 29th, 1912. A copy of Part I, General, was translated into French and sent "unofficially" to the United Kingdom Government.

The following passage occurs on page 20 of this Part I:

"En général, dans les cas particuliers, on prendra le plus sûrement une décision en conformité avec la vieille notion juridique norvégienne, si l'on considère la ligne fondamentale comme étant tirée entre les points les plus extrêmes dont il pourrait être question, nonobstant la longueur de la ligne."

This is clearly the language of a proposal. The tenses of the verbs should be noted.

On the same day, "the Commission presented Report No. 2 'Special and Confidential Part', containing proposals for the definite fixing of base-lines around Finnmark" (Counter-Memorial, paragraph 104). In 1913 a confidential Report was made upon the proposed base-lines on the coasts of the two other provinces concerned. Nordland and Troms (*ibidem*, paragraph 105). It appears (*ibidem*) that the base-points proposed in these confidential Reports are those ultimately adopted by the Decree of 1935; the confidential Reports were not disclosed until 1950 when they appeared as Annexes 36 and 37 of the Counter-Memorial.

* * *

The Judgment of the Court refers to the Judgment of the Supreme Court of Norway in the *St. Just* case in 1934, in which that British vessel was condemned for fishing in territorial waters under the Law of 1906. It is clearly a decision of high authority. From 1934 onwards, it is conclusive in Norway as to the meaning of the Decree of 1812 and as to its effect, whether or not it has been specifically applied to portions of the coast by later Decrees. But this Court, while bound by the interpretation given in the *St. Just* decision of Norwegian internal law, is in no way precluded from examining the international implications of that law. It is a well-established rule that a State can never plead a provision of, or lack of a provision in, its internal law or an act or omission of its executive power as a defence to a charge that it has violated international law. This was decided as long ago as in the Geneva Arbitration of 1870-1871 on the subject of the *Alabama Claims*, when the British Government pleaded that it had exercised all the powers possessed by it under its existing legislation for the purpose of preventing the *Alabama* from leaving a British port and

cruising against Federal American shipping, an omission which cost Great Britain a large sum of money.

The *St. Just* decision is important in the sense that after the decision, the existence of a Norwegian system of straight base-lines cannot be denied either within Norway or on the international plane. Only eight years earlier there had occurred the *Deutschland* case (a case of an attempt by a German vessel to sell contraband spirits) (Annex 9 to the Memorial and Annex 47 to the Counter-Memorial and Annex 31 to the Reply), in which the Norwegian Supreme Court, by a majority of 5 to 1, quashed a conviction by an inferior Court which had been upheld by the Court of Appeal. In the *Deutschland* case, which has now been overruled by the *St. Just*, it was possible for so distinguished a Norwegian jurist as the late Dr. Raestad (much quoted by both Parties in this case) to say in the Opinion supplied by him at the request of the Public Prosecutor that:

“The question arises, however, whether in the present case the extent of the maritime territory must be determined from islands, islets and isolated reefs, or—as the Court of First Instance has done—from imaginary base-lines drawn between two islands, islets or reefs and, if necessary, how these base-lines are to be drawn. A distinction must be made here. On the one hand, the problem arises whether according to international law a State is entitled to declare that certain parts of the adjoining sea fall under its sovereignty in certain—or all—respects. On the other hand, the question may arise whether a State under international law, or by virtue of its own laws, is entitled to consider that its national legislation in the determined case extends to these same parts of the adjoining sea when it has not yet been established that its sovereignty extends that far. A State may have a certain competence without having made use of it.”

and later

“Neither the letters patent [that is, in effect, the Decree of 1812] nor, if they exist, the supplementary rules of customary law, prescribe how and between what islands, islets or rocks the base-lines should be drawn. . . .”

It does not greatly matter whether Dr. Raestad's views are right or wrong. What is important, from the point of view of the notoriety of the Norwegian system of straight base-lines, is

that, in the year 1926, a lawyer of his standing and possessing his knowledge of the law governing Norwegian territorial waters should envisage the possible alternative methods of drawing base-lines, for the Norwegian contention is that the United Kingdom must for a long time past have been aware of the Norwegian system of straight base-lines connecting the outermost points on mainland, islands and rocks, and had acquiesced in it.

The following passage occurs in the *Deutschland* case in the Judgment of Judge Bonnevie, who delivered the first judgment as a member of the majority:

“It is also a matter of common knowledge that the public authorities have claimed, since time immemorial, certain areas, such as for example the Vestfjord and the Varangerfjord, as being Norwegian territorial waters in their entirety, and that the territorial limits should be drawn on the basis of straight lines at the mouth of the fjord (*sic*), regardless of the fact that very great areas outside the four-mile limit are thus included in Norwegian territory. But, for the greater part of the extensive coast of the country, no documents have been produced to prove that there exist more precise provisions, except for the coast off the country of Möre, for which reference is made to the two royal decrees of 1869 and 1889 referred to above.”

* * *

Between 1908 and the publication of the Decree of 1935, the United Kingdom repeatedly asked the Norwegian Government to supply them with information as to their fishery limits in northern Norway; see the Report of the Foreign Affairs Committee of the Storting dated June 24th, 1935 (Memorial, Annex 15), which states that: “The British Government have repeatedly requested that the exact limit of this part of the coast should be fixed so that it might be communicated to the trawler organizations.” The Norwegian reply to these requests has been that the matter was still under consideration by a Commission or in some other way, e.g., in the letter of August 11th, 1931, from the Norwegian Ministry of Foreign Affairs, “the position is that the Storting have not yet taken up a standpoint with regard to the final marking of these lines in all details.”

The impression that I have formed is that what in the argument of this case has been called “the Norwegian system” was in gestation from 1911 onwards, that the *St. Just* decision of 1934 (overruling the *Deutschland* decision) marks its first public

enunciation as a system applicable to the whole coast, and that the Decree of 1935 is its first concrete application by the Government upon a large scale. I find it impossible to believe that it was in existence as a system at the time of the *Deutschland* decision of 1926.

* * *

(D) Another ground upon which Norwegian counsel have sought to justify the Decree of 1935 is that in any case the waters comprised within the outer lines fixed by that Decree lie well within the ancient fishing grounds of Norway to which she acquired a historic title a long time ago.

I think it is true that waters which would otherwise have the status of high seas can be acquired by a State by means of historic title, at any rate if contiguous to territorial or national waters; see Lord Stowell in *The Twee Gebroeders* (1801), 3 *Christopher Robinson's Admiralty Report* 336, 339. But, as he said in that case:

“Strictly speaking, the nature of the claim brought forward on this occasion is against the general inclination of the law; for it is a claim of private and exclusive property, on a subject where a general, or at least a common use is to be presumed. It is a claim which can only arise on portions of the sea, or on rivers flowing through different States. . . . In the sea, out of the range of cannon-shot, universal use is presumed. . . . Portions of the sea are prescribed for. . . . But the general presumption certainly bears strongly against such exclusive rights, and the title is a matter to be established, on the part of those claiming under it, in the same manner as all other legal demands are to be substantiated, by clear and competent evidence.”

Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a license or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them.

When the documents that have been submitted in this case in support of historic title are examined, it appears to me that, with one exception which I shall mention, they are marked by a lack of precision as to the waters which were the subject of fishing.

We get expressions such as "near our fortress of Varshus", "off the coasts of Finnmark", "the waters off the coast of this country", "near the land", "fish quite close to the coast", "unlawful fishing which they have been practising in certain localities", "the waters of Finnmark", "fjords or their adjacent waters", "whaling in the waters which wash the coast of Norway and its provinces, in particular Iceland and the Faroe Islands", etc., etc.

The exception is the case of the licenses granted to Eric Lorch in the seventeenth century (see Annex 101 to Norwegian Rejoinder). In 1688 he received a license to fish in, amongst other places, "the waters . . . of the sunken rock of Gjesbaen"; in 1692 he received a license to hunt whales; in 1698 he received another license to hunt whales, which mentions, among other places, "the waters . . . of the sunken rock of Gjesbaen". The last two licenses state that it is forbidden to "all strangers and unlicensed persons to take whales in or without the fjords or their adjacent waters, within ten leagues from the land."

I do not know precisely where the *rock* called Gjesbaen or Gjesbaene is situated, beyond the statement in paragraph 36 of the Counter-Memorial that it is "near the word Alangstaran", which is marked on the Norwegian Chart 6 (Annex 75 to the Rejoinder as being *outside* the outer Norwegian line of the Decree of 1935. On the same chart of the region known as LoppHAVET there appear to be two fishing-banks called "Ytre Gjesboene" and, south of it, "Indre Gjesboene", the former being outside the outer line of the Decree of 1935 and the latter between the outer line and the base-line of that Decree. What the dimensions of the fishing-banks are is not clear. The length of the base-line (from point 20 to 21) which runs in front of LoppHAVET is 44 miles, so that even if the licences formed sufficient evidence to prove a historic title to a fishing-bank off "the sunken rock of Gjesbaen", they could not affect so extensive an area as LoppHAVET. The three licenses cover a period of ten years and there is no evidence as to the duration of the fishery or its subsequent history.

* * *

In these circumstances I consider that the delimitation of territorial waters made by the Norwegian Decree of 1935 is in conflict with international law, and that its effect will be to injure the principle of the freedom of the seas and to encourage further encroachments upon the high seas by coastal States. I regret therefore that I am unable to concur in the Judgment of the Court.

(Signed) ARNOLD D. MCNAIR.

B. Abu Dhabi Arbitration Award

1. NOTE. This Award, reprinted below from 1 *I.C.L.Q.* 247 (1952), is included because of its interest as a pioneering discussion of the continental shelf doctrine. Although not authoritative except as between the parties, it will be influential because of the distinction of the participants. See Young, "Lord Asquith and the Continental Shelf," 46 *A.J.I.L.* (1952), page 512. See, also, a discussion of the Award by J. Y. Brinton in 8 *Revue Egyptienne de Droit International* 114 *et seq.* (1952). An earlier arbitration raising essentially the same question between the Ruler of Qatar and Petroleum Development (Qatar) Ltd. reached the same result in a decision by Lord Radcliffe as Third Arbitrator but without an accompanying opinion. See Annex II to a Note on "Problems of the Continental Shelf" (by J. Y. Brinton) in *Ibid.*, Vol. 6, p. 165 at p. 171 (1950).

2. Text of the Award

In the Matter of An Arbitration between Petroleum Development (Trucial Coast) Ltd. and the Sheikh of Abu Dhabi.

AWARD OF LORD ASQUITH OF BISHOPSTONE

1. On January 11, 1939, Sheikh Shakhbut of Abu Dhabi, one of the Trucial States abutting on the Gulf of Persia from the south and west, entered into a written contract in the Arabic language with Petroleum Development (Trucial Coast) Ltd., whereby the Sheikh purported to transfer to that company the exclusive right to drill for and win mineral oil within a certain area in Abu Dhabi. That written agreement contained an arbitration clause, providing for the reference of disputes arising under it to arbitration, for the appointment of two arbitrators, and for the appointment of an umpire in the event of the two arbitrators being unable to agree. Certain disputes (the nature of which is indicated more precisely below, but which relate in substance entirely to the area of the concession) have arisen under this agreement and were in fact referred to arbitration; the said arbitrators did differ; and appointed me as umpire. According to the terms of the arbitration clause, this, my Award, in respect of the dispute is final.

1A. Abu Dhabi has a coast line of about 275 miles on the Gulf. It is bounded on the west by the State of Qatar, and on the east by the State of Dubai, both much smaller States. These frontiers, however, were and are to some extent vague. So is its mainland area, which has been estimated at anything from 10,000 to 26,000 square miles. The main reason for these wide divergences is that the depth of hinterland to be included is indeterminate. Abu Dhabi is a large, primitive, poor, thinly populated country, whose revenue, until oil was discovered, depended mainly on pearling. It is, like the other Trucial Principalities, a British-

protected State; that is, its external relations are controlled by His Majesty. Internally, the Sheikh is an absolute, feudal monarch.

2. The nature of the disputes referred to arbitration and the subject-matter of this Award are formulated in a letter from the claimants to the respondent dated July 18, 1949. The letter runs as follows:—

“The arbitration is to determine what are the rights of the Company with respect to all underwater areas over which the Ruler has or may have sovereignty jurisdiction control or mineral oil rights.

“The Company claims that the area covered by the Agreement of January 11, 1939 (notably Articles 2 and 3 thereof), includes in addition to the mainland and islands:

“(1) All the sea-bed and subsoil under the Ruler’s territorial waters (including the territorial waters of his islands), and

“(2) All the sea-bed and subsoil contiguous thereto over which either the Ruler’s sovereignty jurisdiction or control extends or may hereafter extend, or which now or hereafter may form part of the area over which he has or may have mineral oil rights.”

The issues: The questions referred to arbitration can usefully be paraphrased by expanding them into four, of which the first two deal with territorial waters and the second two with the submarine area outside territorial waters—

(i) At the time of the agreement of January 11, 1939, did the respondent—the Sheikh—own the right to win mineral oil from the subsoil of the sea-bed adjacent to the territorial waters of Abu Dhabi? (There seems to be no doubt about this.)

(ii) If yes, did he by that agreement transfer such right to the claimant company?

(iii) At the time of the agreement did he own (or as the result of a proclamation of 1949 did he acquire) the right to win mineral oil from the subsoil of any, and, if so, what submarine area lying outside territorial waters?

(iv) If yes, was the effect of the agreement to transfer such original or acquired rights to the claimant company? (The Sheikh in 1949—10 years after this agreement—purported to transfer these last rights to an American company—the “Superior Corporation”: which the Petroleum Development Company claim he

could not do, since he had already 10 years earlier parted with these same rights to themselves.)

I would add that the parties requested me to express a view both on question (iii) and on question (iv), even if owing to the answer given to one of these questions, the other should become academic; and the view expressed upon it at best an *obiter dictum*.

3. *The terms of the agreement:* The terms of the agreement which are mainly relevant to the determination of these questions are articles 2, 3, 12a, 1 and 17; from which I proceed to quote certain passages.

4. The agreement having originally been in the Arabic tongue, considerable differences have arisen as to what is and what is not an accurate translation. This applies particularly to what is the most crucial article of all, namely article 2. Although, as will later appear, the divergences between those translations are not important, I think I ought for completeness to set out the rival translations. In the translation originally relied upon by the claimant company, the wording of article 2 is as follows:—

“ARTICLE 2. (a) The area included in this Agreement is the whole territory subject to the rule of the Ruler of Abu Dhabi and its dependencies, and all its islands and territorial waters. And if in the future there should be carried out a delimitation of the territory belonging to Abu Dhabi, by arrangement with other governments, then the area (of this Agreement) shall coincide with the boundaries provided in such delimitation.

“(b) If in the future a Neutral Zone should be formed adjacent to the territories of Abu Dhabi and the rights of rule over such Neutral Zone be shared between the Ruler of Abu Dhabi and another Ruler, then the Ruler of Abu Dhabi undertakes that this Agreement shall include all the mineral oil rights which belong to him in such Zone.

“(c) The Company shall not undertake any works in areas used and set apart for places of worship or sacred buildings or burial grounds.”

In the translation of this article relied upon by the respondent, the Sheikh, the wording is as follows:—

“ARTICLE 2. (a) The area included in this Agreement is the whole of the lands which belong to the rule of the

Ruler of Abu Dhabi and its dependencies and all the islands and the sea waters which belong to that area. And if in the future the lands which belong to Abu Dhabi are defined by agreement with other States, then the limits of the area shall coincide with the limits specified in this definition.

“(b) If in the future a Neutral Area should be established adjacent to the lands of Abu Dhabi and the rights of rule over such Neutral Area be shared between the Ruler of Abu Dhabi and another Ruler, then the Ruler of Abu Dhabi undertakes that this Agreement shall include what mineral oil rights he has in that area.

“(c) The Company shall not undertake any works in areas used and set apart for places of worship or sacred buildings or burial grounds.”

Article 3 of the Agreement runs as follows in the translation relied upon by the claimants:

“ARTICLE 3. The Ruler by this Agreement grants to the Company the sole right, for a period of 75 solar years from the date of signature, to search for, discover, drill for and produce mineral oils and their derivatives and allied substances within the area, and the sole right to the ownership of all substances produced, and free disposal thereof both inside and outside the territory: provided that the export of oil shall be from the territory of the Concession direct without passing across any adjacent territory.

“And it is understood that this Agreement is a grant of rights over Oil and cannot be considered an Occupation in any manner whatsoever.”

In the translation relied up by the respondent the only difference is the wholly immaterial one that “dig for” appears in lieu of “drill for.”

Article 12 (a) runs as follows:

In the translation relied upon by both parties:—

“ARTICLE 12. (a) The Ruler shall have right at any time to grant to a third party a Concession for any substances other than those specified in Article 3, on condition that this shall have no adverse effect on the operations and rights of the Company.”

Article 1 defines the expression “The Ruler” in the translation relied upon by both parties as follows:—

“ARTICLE 1. The expression “The Ruler” includes the present Ruler of Abu Dhabi and its dependencies and his heirs and successors to whom may in future be entrusted the rule of Abu Dhabi.”

Article 17 is in these terms:

In the translation relied upon by the claimants:—

“ARTICLE 17. The Ruler and the Company both declare that they intend to execute this Agreement in a spirit of good intentions and integrity, and to interpret it in a reasonable manner. The Company undertakes to acknowledge the authority of the Ruler and his full rights as Ruler of Abu Dhabi and to respect it in all ways, and to fly the Ruler’s flag over the Company’s buildings.”

In the translation relied upon by the respondents:—

“ARTICLE 17. The Ruler and the Company both declare that they *base their work* in this Agreement on goodwill and sincerity of belief and on the interpretation of this Agreement in a fashion consistent with reason. The Company undertakes to acknowledge the authority of the Ruler and his full rights as Ruler of Abu Dhabi and to respect it in all ways, and to fly the Ruler’s flag over the Company’s buildings.”

The variation between the two translations of *Article 17* would seem immaterial.

5...*Order in which questions considered:*

The order in which I propose to consider the questions raised by the arbitration is the following:—

- (a) What is the true translation of the Agreement?
- (b) What is the “Proper Law” of the Agreement, that is, the law applicable in interpreting it?
- (c) If that law were applied to the bare language of the Agreement, and no regard were paid either (1) to the so-called doctrine of the “Continental Shelf” or, (2) to the negotiations leading up to its signature, what construction ought to be placed on those of its provisions which are the subject-matter of the present dispute?

(d) What is the substance and history of the doctrine of the Continental Shelf?

(e) Is it an established rule of International Law?

(f) If it were, would it operate in any, and if so, what way to modify the construction of the contract which would prevail in its absence?

(g) If not, did the negotiations leading up to the execution of the contract have any such modifying operation?

I will then record my conclusions in paragraph 6.

I now revert to paragraph 5, taking its subparagraphs in turn.

(a) *Translations*: I have indicated the two rival translations of the contract of 1939. There is in this matter little conflict; and there would probably have been even less but for the circumstance that the Arabic of the Gulf, in which the contract is framed, is an archaic variety of the language, bearing, I was told, some such relation to modern current Arabic as Chaucer's English does to modern English. Such discrepancies, however, as exist between the two translations are fortunately trivial, and the claimants were willing for purposes of argument to accept the translation put forward on behalf of the respondent. I therefore adopt that translation in what follows.

(b) What is the "Proper Law" applicable in construing this contract? This is a contract made in Abu Dhabi and wholly to be performed in that country. If any municipal system of law were applicable, it would *prima facie* be that of Abu Dhabi. But no such law can reasonably be said to exist. The Sheikh administers a purely discretionary justice with the assistance of the Koran; and it would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments. Nor can I see any basis on which the municipal law of England could apply. On the contrary, Clause 17 of the agreement, cited above, repels the notion that the municipal law of any country, as such, could be appropriate. The terms of that clause invite, indeed prescribe, the application of principles rooted in the good sense and common practice of the generality of civilised nations—a sort of "modern law of nature." I do not think that on this point there is any conflict between the parties.

But, albeit English municipal law is inapplicable *as such*, some of its rules are in my view so firmly grounded in reason, as to form part of this broad body of jurisprudence—this "modern law of nature." For instance, while in this case evidence has been admitted as to the nature of the negotiations leading up to, and of the correspondence both preceding and following the conclusion

of the agreement, which evidence as material for construing the contract might, according to domestic English law be largely inadmissible, and to this extent the rigid English rules have been disregarded; yet on the other hand the English rule which attributes paramount importance to the actual language of the written instrument in which the negotiations result seems to me no mere idiosyncrasy of our system, but a principle of ecumenical validity. Chaos may obviously result if that rule is widely departed from; and if, instead of asking what the words used mean, the inquiry extends at large to what each of the parties meant them to mean, and how and why each phrase came to be inserted.

The same considerations seem to me to apply to the principle *expressio unius est exclusio alterius*. I defer entirely to the warnings given by Wills J. and Lopes L.J. in the case of *Colquhoun v. Brooks* (19 Q.B.D. 400, at p. 406; 21 Q.B.D. 52, at p. 65), as to the possibilities (and indeed the frequency) of its misapplication. But confined within its proper borders it seems to me mere common sense. (If I have a house and a garden and 200 acres of agricultural land and if I recite this and let to X "my house and garden," it seems obvious that the 200 acres are excluded from the lease.)

Much more dubious to my mind is the application to this case of certain other English maxims relied on by one or the other party in this case. For instance, *verba chartarum fortius accipiuntur contra proferentem*: or the rule that grants by a sovereign are to be construed against the grantee. The latter is an English rule which owes its origin to incidents of our own feudal polity and royal prerogative which are now ancient history; and its survival, to considerations which, though quite different, seem to have equally little relevance to conditions in a protected State of a primitive order on the Persian Gulf.

(c) The next point for consideration is what construction the words of the contract (in particular those of articles 2 and 3, which are crucial) would bear, if (1) no regard were had to the doctrine of the so-called "Continental Shelf" or "submarine area," and (2) no regard were had to the negotiations preceding the Agreement or to the correspondence accompanying it. It may help in the first place to brush aside these complicating factors and consider the bare language of the Agreement itself; reintroducing the complications at a later stage.

Articles 2 and 3 define the area within which the concession is to operate and therefore touch the heart of the dispute; which turns entirely on the extent of that area.

Article 2 opens with the words "The area included in this Agreement." "Included" for what purpose? This question remits

us to article 3, which provides that the Ruler of Abu Dhabi grants to the claimant company the "sole right" for a period of 75 years to "discover, dig for and produce" mineral oils and their derivatives and allied substances "within the area." The "sole right" shortly, is a right to win petroleum from the "area" in question. What area? Turning back to Article 2 we find the area includes "the whole of the lands which belong to the rule of the Ruler of Abu Dhabi and their dependencies." The sentence does not end there. It goes on with the words "*and* all the islands and sea waters which belong to that area."

What does the word "and" mean in this connection? In its most natural sense it surely means "plus." It introduces an addendum to something which has gone before. (I discuss an alternative meaning suggested for it below). But if it simply means "plus," then the expression "the whole of the lands which belong to the rule of the Ruler" cannot be read literally; for read literally that phrase would include in any case the islands, and probably the territorial waters, and it would not be necessary or sensible to make these items addenda. On this meaning of "and," the "land" must be limited to the mainland (no doubt excluding inland or landlocked waters in an indented coast). What, on this basis, does the second addendum mean? *viz.*, "the sea waters which belong to that area?" Placing oneself in the year 1939 and banishing from one's mind the subsequent emergence of the doctrine of the "Shelf" and everything to do with the negotiations, I should have thought this expression could only have been intended to mean the territorial maritime belt in the Persian Gulf, which is a three-mile belt; together with its bed and subsoil, since oil is not won from salt water. In what other sense at that time could sea waters be said to "belong" to a littoral power or to the "rule of the Ruler?" In point of fact, that is the meaning the claimant company were asserting for the expression as late as March, 1949, ten whole years after the contract (see letter page 86A of the Correspondence).

Even if "and" had a different signification, not cumulative but epexegetic, such as "and mark you, in case you are in doubt, I include in the 'lands' the islands and sea waters which belong to the area," I should still hold, in the absence of what I have termed the two complicating factors, that the Concession covered the sea-bed and subsoil of the territorial belt. Nothing less. The only question would be whether it covered more.

Conclusion as to territorial waters' subsoil: I therefore hold or find that the subsoil of the territorial belt is included in the Concession. Neither the ambiguity, if any, of the word "and"

nor any of the considerations dealt with hereafter affect this conclusion. In particular I cannot accept the argument put forward for the respondent that sea waters are merely "included" as a means of access to dry land, whether mainland or insular. To read the word "included," in the Concession, as meaning in the case of the mainland and islands "included as petroliferous areas": and to read it in relation to the "sea waters" as something totally different, namely, "included as means of access to the petroliferous areas," seems to me unjustifiable, if not perverse.

I am not impressed by the argument that there was in 1939 no word for "territorial waters" in the language of Abu Dhabi, or that the Sheikh was quite unfamiliar with that conception. Mr. Jourdain had none the less been talking "prose" all his life because the fact was only brought to his notice somewhat late. Every State is owner and sovereign in respect of its territorial waters, their bed and subsoil, whether the Ruler has read the works of Bynkershoek or not. The extent of the Ruler's Dominion cannot depend on his accomplishments as an international jurist.

So far affirmatively. Negatively (still leaving aside what I have called the complicating factors) I should certainly in 1939 have read the expression "the sea waters which belong to that area" not only as including, but as *limited* to, the territorial belt and its subsoil. At that time neither contracting party had ever heard of the doctrine of the Continental Shelf, which as a legal doctrine did not then exist. No thought of it entered their heads. None such entered that of the most sophisticated jurisconsult, let alone the "understanding" perhaps strong but "simple and unschooled" of Trucial Sheikhs.

Directed, as I apprehend I am, to apply a simple and broad jurisprudence to the construction of this contract, it seems to me that it would be a most artificial refinement to read back into the contract the implications of a doctrine not mooted till seven years later, and, if the view which I am about to express is sound, not even today admitted to the canon of international law. However, the time has now come to consider this doctrine more narrowly.

(d) *The doctrine of the Continental Shelf, its substance and history*: The expression "Continental Shelf" was first used by a geographer in 1898.¹ The legal doctrine which later gathered round this geographical term was possibly foreshadowed when in 1942 England and Venezuela concluded a treaty about the Gulf

¹ It made a fleeting appearance on the legal stage in 1916: but passed over it with "printless feet."

of Paria providing for spheres of influence in respect of areas covered by the high seas and followed by certain annexations coincident with these spheres. The doctrine was perhaps first explicitly asserted as a legal doctrine (in a very exaggerated form) in a proclamation by the Argentine Republic in 1944, but its classical enunciation in the form in which it has mainly to be considered in this case was the well-known proclamation by President Truman of September 28, 1945.

The substance of the doctrine then proclaimed, as I understand it, was this: A coastal power is not surrounded, even at low water, by a precipice leading vertically to the bottom of the ocean, perhaps two miles below. As a rule the sea-bed shelves very gently outwards and downwards for a considerable distance, a distance generally (but not invariably) exceeding the three-mile territorial limit.² Again, not always but very often, where the sea reaches a depth of about 100 fathoms or (what is much the same thing) 200 metres, the edge of this shelf is reached and there is a more or less abrupt plunge of the land-mass down to the ocean floor. The doctrine of the "Shelf" as proclaimed in the Truman Declaration of 1945 arrogated to the United States "jurisdiction and control" over "the resources" of the American Continental Shelf which was described as "appertaining" to the United States.

The resources referred to were those of the subsoil of that zone of the sea-bed which lies between the limit of the territorial waters and the point at which its gently shelving character gives place to an abrupt descent.³

Several other States followed roughly the same course as the United States. For instance, Great Britain (not quite on the same lines) in respect of Jamaica and of the Bahamas, and Saudi Arabia in respect of parts of the Persian Gulf. Other States weighed in with similar claims. These other States fall into two groups; I. Mexico and the Latin and Central American Republics, and II. The States which are most directly relevant in this Arbitration—States bordering on the Persian Gulf other than Saudi Arabia.

² If I speak of the three-mile limit and of the Territorial Maritime Belt interchangeably, this is only for brevity. I am aware that some States claim more than a three-mile belt, but about 80 per cent of the merchant shipping in the world is registered in "three-mile" countries; and this is the width of territorial waters on the Persian Gulf.

³ It does not seem to make any difference for the present purpose whether as a matter of geological fact the Shelf was built up by erosion of material from the unsubmerged portion and by its sedimentation, or whether the Shelf was originally there in a denuded state and was subsequently submerged by what is poetically called the "transgression of the seas."

In almost every case the claim was embodied in a decree or proclamation. Most often, though not invariably, the proclamation was in a "declaratory" form, that is in a form asserting or implying that the proclamation was not constitutive of a new right but merely recorded the existence of a pre-existing one.⁴

I. The claims of the Latin and Central American Republics were often far more ambitious than those of this country, the United States and Saudi Arabia; inasmuch as on the one hand the former claims were often claims to actual sovereignty over the Shelf and its subsoil⁵ and on the other hand, and this is more important, the claims were often not limited to the Shelf as a geological entity or even to the area ending where the depth of the sea began to exceed 100 fathoms, but sometimes extended to a zone 200 nautical miles from the mainland; an area quite unrelated to the width of the physical Shelf.⁶ In these exorbitant forms the claims met with protest and resistance; but in the more modest form in which they were advanced by the United States, the United Kingdom and Saudi Arabia, they were acquiesced in by the generality of Powers, or at least not actively gainsaid by them.

II. *The British Persian Gulf Proclamations:* The proclamation of Saudi Arabia was followed in 1949 by proclamations issued by the Sheikhs of the Trucial States (or on their behalf by the Government of the United Kingdom *qua* protecting Power) including the Sheikh of Abu Dhabi. All of these last proclamations conform broadly in their terms to the Truman proclamation. They mostly contain recitals on the following lines: "Whereas it is just that the sea-bed and subsoil extending to a reasonable distance from the coast should appertain to and be controlled by the littoral State to which it is adjacent." The Abu Dhabi proclamation of June 10, 1949, provides in its operative part "We, Shakhbut Bin Sultan Bin Za'id, Ruler of Abu Dhabi, hereby declare that the seabed and subsoil lying beneath the high seas in the Persian Gulf contiguous to the territorial waters of Abu Dhabi and extending seaward to boundaries to be determined more precisely as occa-

⁴ Declaratory: see, for instance, the proclamations of Saudi Arabia, May 28, 1949, of the Trucial States including Abu Dhabi of June 10, 1949; the Truman proclamation of 1945, though its language is not on this point wholly free from ambiguity: and contrast with these proclamations the language of the United Kingdom proclamations in the case of the Bahamas, November 27, 1949; Jamaica, November 26, 1948; and of the Falkland Islands, December 21, 1950, all of which employ somewhat annexatory language such as "the boundaries" of the Colony "are hereby extended": language "constitutive" of rather than merely declaratory of the rights involved.

⁵ As in the case of Argentina 1944, Mexico 1945 and Chile 1947.

⁶ As in the case of Chile, El Salvador, Honduras and Costa Rica.

sion arises on equitable principles by us after consultation with the neighboring states appertain to the land of Abu Dhabi and are subject to its exclusive jurisdiction and control."

(e) *Is the doctrine in any of its forms part and parcel of international law?*: The preceding section calls attention not only to the recent origin of the doctrine but to the great variety of forms which in its short life it has assumed. Some States claim sovereignty over the Shelf. Others pointedly avoid doing so, claiming only "jurisdiction" or "control," "appurtenance" and the like. Whatever the scope of the rights claimed, some States assert those rights by declaratory proclamations implying their pre-existence; others issue proclamations which are on the face of them a new departure and designed to be constitutive of title. What is the seaward limit of the Shelf? Here again the answers given differ. Some States say, "its geological or geographical limit, its 'edge' or its 'drop'." Others (whether because their particular Shelf has got no edge and has got no drop, or for other reasons), say, "the point at which the sea becomes 100 fathoms or 200 metres deep"; while yet others say, "a line drawn parallel to the coast of the contiguous power and 200 nautical miles from it." The 200-mile claim seems to be more or less universally discredited. The other two criteria seem on their face much more reasonable. But what is the position where as in the Persian Gulf itself, both of these more reasonable criteria fail us, because the Shelf not only has no edge, but extends continuously across a sea whose waters never attain a depth of as much as 100 fathoms? Is it to extend outwards to a "reasonable distance" from the coast—the expression used in the recital of the Abu Dhabi proclamation? If so, what is a "reasonable distance"? Where States are grouped, as in this case, round a more or less cylindrical gulf, is the principle "*usque ad medium filum*" applicable? How could it possibly be applied in the case of comparably shallow seas of completely irregular configuration, such as the North Sea? Again how are rights of whatever character to the subsoil of the Shelf acquired? Can they indeed be acquired at all? Or would their existence inevitably conflict with the "freedom" of the high seas? Before the doctrine of the Shelf was promulgated I think the general answer might well have been that they cannot be acquired at all—that the Shelf is as inappropriable as the high seas that roll or repose above it: subject to this reservation, that the sea-bed (not the subsoil) of the submarine area, is in certain rare cases, subject to a customary right vested in certain States to conduct "sedentary" fisheries in such sea-bed. For instance, the right to

fish for sponges, coral, oysters, pearls and chank.⁷ Indeed; the shallow seas of the Persian Gulf are subject to mutual pearling rights by subjects of the various littoral States. If, however, the submarine area is capable not merely of being the subject-matter of these limited occupational rights over the sea-bed, and *pro tanto* a "*res nullius*," is its subsoil as a whole *res nullius*? that is to say, something in which rights can be acquired, but only by effective occupation? Or is the position, as the claimants' main argument maintains, that the rights in the subsoil of the Shelf adhere (and must be taken always to have adhered) *ipso jure*—occupation or no occupation—to the contiguous coastal Power? Or failing that, if occupation be indeed necessary; in cases where it is almost impracticable, may proclamations, or similar acts be treated as a constructive or symbolic or inchoate occupation (the claimants' alternative contention under this head)?

Conclusion as to doctrine of the Continental Shelf: Neither the practice of nations nor the pronouncements of learned jurists give any certain or consistent answer to many—perhaps most—of these questions. I am of opinion that there are in this field so many ragged ends and unfilled blanks, so much that is merely tentative and exploratory, that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of international law.

Whether there *ought* to exist a rule giving effect to the doctrine in one or other and, if so, which of its forms is another question and one which, if I had to answer it, I should answer in the affirmative. There seems to me much cogency on the arguments of those who advocate the *ipso jure* variant of the doctrine. In particular: (1) it is extremely desirable that someone, in what threatens to become an oil-starved world, should have the right to exploit the subsoil of the submarine area outside the territorial limit; (2) the contiguous coastal Power seems the most appropriate and convenient agency for this purpose. It is in the best position to exercise effective control, and the alternatives teem with disadvantages; (3) there is no reason in principle why the subsoil of the high seas should, like the high seas themselves, be incapable of being the subject of exclusive rights in any one. The main reasons why this status is attributed to the high seas is (i) that they are the great highways between nations and navigation of these highways should be unobstructed. (ii) That fishing in the high seas

⁷ An incompletely, sedentary crustacean. I gathered from Professor Waldoock that a chank moves very slowly: *epur si muove*: on this whole subject Sir Cecil Hurst's Paper read to the Grotius Society in 1948 is the *locus classicus*.

should be unrestricted (a policy approved by this country ever since Magna Carta abolished "several" fisheries). The subsoil, however, of the submarine area is not a highway between nations and the installations necessary to exploit it (even though sunk from the surface into the subsoil rather than tunnelled laterally) need hardly constitute an appreciable obstacle to free navigation; nor does the subsoil contain fish. (4) To treat this subsoil as *res nullius*—"fair game" for the first occupier—entails obvious and grave dangers so far as occupation is possible at all. It invites a perilous scramble. The doctrine that occupation is vital in the case of a *res nullius* has in any case worn thin since the East Greenland Arbitration and more especially since that relating to Clipperton Island. But leaving that aside, it is difficult to imagine any arrangement more calculated to produce international friction than one which entitles nation A, it may be thousands of miles from nation B, to stake out claims in the Continental Shelf contiguous to nation B by "squatting" on B's doorstep—at some point just outside nation B's territorial water limit.

The question just considered, namely not what is but what ought to be the rule, is not so irrelevant as it might at first sight appear, for the following reason: the International Law Commission appointed by the United Nations with M. Francois as Rapporteur, has been investigating the doctrine and problems of the Continental Shelf. This body has made a number of reports of great interest and importance including a draft code contained in the Report of the Third Session of the International Law Commission (A-CN 4-48) consisting of some six or seven short articles of which I will quote the first three.

ARTICLE 1. "As here used the term 'Continental Shelf' refers to the sea-bed and subsoil of the submarine areas contiguous to the coast but outside the areas of territorial waters where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil."

ARTICLE 2. "The Continental Shelf is subject to the exercise by the coastal state of control and jurisdiction for the purpose of exploring it and exploiting its natural resources."

ARTICLE 3. "The exercise by a coastal state of control and jurisdiction over the Continental Shelf does not affect the legal status of the superjacent waters as high seas."

These draft Articles have been prayed in aid by the claimants with the implication that they are, or are intended to be the

expression of principles which are already part of international law, not merely of principles which ought to, or might with advantage, form part of that law in future. If this is indeed the contention of the claimants, I am of opinion that it is ill-founded. It is clear that the Codifying Commission of the International Law Commission is charged with two distinct functions, (1) that of recording existing rules of international law, and (2) that of indicating what the law should be; promoting as the phrase runs, "the progressive development of international law" by preparing draft conventions on "subjects which have not yet been regulated by international law, or in regard to which the law has not yet been sufficiently developed in the practice of States." It seems to me clear that these Articles were framed in the discharge, not of the first but of the second, of these functions. As the Commission in paragraph 6 of its commentary on Article 2 says: "The Commission has not attempted to base on customary law the right of a State to exercise control and jurisdiction for the limited purposes stated in Article 2, and though numerous proclamations have been issued over the past decade it can hardly be said that such unilateral action has already established a new customary law."⁸

⁸ In respect of this interpretation of the suggested Articles—*viz.*, as recommendations rather than records—the following United Nations documents are relevant; besides A-CN. 4-48 of 1951 itself (the suggested Articles and commentary thereon), A-CN. 4-Sr. 66, 67, 68 and 69 (these last constituting the Summary Record of the meetings of the Second Session of the International Law Commission, 1950). Perhaps I may make this footnote the vehicle for an expression of gratitude to those who addressed me, for bringing to my notice some of the voluminous literature, articles, addresses and other publications—by experts on the Continental Shelf. Those from which I have derived the most instruction include:

(1) Prof. H. Lauterpacht's article entitled "Sovereignty over Submarine Areas," which is likely to be published in the *British Year Book of International Law*, Vol. 27, 1950, pp. 376-433, almost simultaneously with this Award.

(2) Professor Waldock's article "The Legal Basis of Claims to the Continental Shelf" (to appear in *Transactions of the Grotius Society*, Vol. 36, 1950), previously printed as a paper submitted to the Copenhagen Conference of the International Law Association, 1950.

(3) Mr. Richard Young's article, "The Legal Status of Submarine Areas beneath the High Seas," published in the *American Journal of International Law*, Vol. 45, 1951, April, pp. 225-249.

(4) The Memorandum of the Secretary-General of the United Nations on the *Regime of the High Seas*—2nd Session (1950) of the International Law Commission (A-CN. 4-32).

(5) The works of Sir Arnold McNair *passim*; my debt to which is too diffused to be particularised by chapter and verse.

I therefore cannot accept these Articles as recording, or even purporting to record, established rules: and if they do not, if they are mere recommendations as to what such rules might with advantage be, if adopted by International Convention, they clearly cannot affect the construction of the contract of 1939. (f) Pausing here before dealing with the last question, *viz.*, the effect, if any of the *negotiations* on the meaning of the contract; and considering only the possible effect on the construction of the contract of the doctrine of the Shelf; I would summarise as follows the claimant's argument and my conclusions about it: The claimant's primary contention is (1) that the doctrine of the Shelf is settled law, (2) that it always was so, and therefore that it was so in 1939; *ergo*, the meaning which some of the expressions in the contract would or might otherwise have borne is enlarged by the inclusion therein of the Shelf. For instance, in Article 2 either the expression "the whole of the lands which belong to the rule of the Ruler of Abu Dhabi" or the expression "and the sea waters which belong to that area," are so enlarged by the inclusion of an area in this case measuring over 10,000 square miles of extraterritorial marine subsoil. The argument falls to the ground if I am right in rejecting the premiss on which it rests, namely, that the doctrine of the Shelf has become and, indeed, was already in 1939, part of the *corpus* of international law.

Again, if I am right in rejecting that premiss, the second way in which they put their case also fails; here they rely on the proviso to Article 2 which says that "If in future the lands which belong to Abu Dhabi are defined by agreement with other States, then the limits of the area" (of the Concession) "shall coincide with the limits specified in this definition." The argument is that the Concession is by these words expressly to extend to any after-acquired area of Abu Dhabi, and that the effect of the proclamations of 1949, if not retrospective, cannot be less than to add the Shelf to the area originally covered as from the date when the proclamations were promulgated. This argument also fails if I am right in thinking that the premiss on which it rests is invalid; but I think it would fail independently of that since there has been no definition of anything "by agreement with other States," and I should have thought in any case that the definition referred to was limited to one affecting dry land, whether epirhot or insular.

LASTLY:—

(g) *The Negotiations*: Did the negotiations attending the conclusion of the contract operate to modify what I have held to be the construction which the contract would bear if there

had been no such negotiations? I do not find it possible to base any firm conclusion under this head on the use of Arabic words such as "ard" or "aradi" or "mantiqua" in the negotiations leading up to the Agreement, nor on the fact that the price offered for options for oil concessions to the various Trucial Sheikhs from 1935 onwards till 1939 were proportioned not to any square mileage which included marine areas, but only to the length of the respective coast lines; although it is clear that marine areas were at this stage quite outside the contemplation of the parties.

Some evidence was given as to oral interchanges between the Sheikh on the one hand and Mr. Lermite and Brigadier Longrigg on the other in the last fortnight or so before the contract was signed. The Sheikh in his evidence said, I doubt not in perfect good faith, that the meaning of the expression "the sea waters belonging to that area" was never discussed with him at all. The two witnesses for the company say that it was; they said that they explained that the territorial water belt of three miles would be included *prima facie* in the Concession, but added that the Sheikh then claimed that he ruled the waters leading out from the coast to islands, 50, or one of them even 100, miles out from the shore: and that it was in deference to this claim of the Sheikh's that the formula "and the sea waters belonging to that area" was inserted.

I am clearly of opinion and find as a fact that the Sheikh's recollection was at fault in so far as he said that the phrase in question was never mentioned in the negotiations. Mr. Lermite and Brigadier Longrigg cannot have imagined the discussion to which they testified. They were excellent witnesses in point both of integrity and accuracy; although under the latter head one cannot forget that they, like the Sheikh, were testifying to events 12 years old. I think it more probable than not that the Sheikh did claim to rule coastal seas outside the three-mile limit. It is not the custom of Oriental potentates to minimise the extent of their dominions; but having regard particularly to subsequent correspondence it seems to me far more probable that this was, and was taken by the claimants to be, a rhetorical flourish than that it was either intended or treated at the time as a sober contractual stipulation. In a similar vein we say, "Britannia rules the waves." We do not expect to be taken literally. If we were, we should be challenging the doctrine of the freedom of the seas.

Certainly there is nothing in the correspondence for a whole 10 years or more after the contract to suggest that the company attached any binding contractual quality to this statement, assum-

ing it was made. As late as March 9, 1949 (p. 84a of the correspondence) the company were claiming no more (apart from the mainland and islands) than the territorial three-mile belt. On March 24, 1949, however, a controversial discussion (recorded at p. 87 and the following pages of the correspondence) occurs between Mr. Lermite and the Sheikh on which some such claim is raised for the first time. The Sheikh is contending that the company have no right under the Agreement to drill in any part of the sea bed even in the territorial zone. Mr. Lermite replies, "It is recognised universally that the boundaries of any country situated on the sea extend automatically three miles into the sea. This is what is called 'territorial waters'." In the latter part of this interview as recorded, Mr. Lermite for the first time claims more submerged land than that covered by territorial waters, and this does not appear to be expressly challenged by the Sheikh (p. 88, sub-p. 3): but Brigadier Longrigg even as late as March 25, 1949, in a letter from London is only mooting in a very tentative fashion the view that where "exclusive rights are granted to a company in respect of the whole of a State including its territorial waters then the company is entitled to the same rights in respect of the subsoil of the Continental Shelf appertaining to that State" (p. 89). If Brigadier Longrigg had had a clear express promise of a contractual order from the Sheikh of rights in respect of the subsoil in the sea for 50 or a 100 miles out from the coast, no halting tentative and *ex post facto* recourse to the Shelf doctrine would have been needed. He would have had an express undertaking valid without reference to that doctrine, and would have said so.

For these reasons I am of opinion that the *prima facie* construction of the Agreement, which in my view excludes from the Concession the Shelf, is not modified so as to include it by the negotiations incident to the Agreement any more than by the (in my view incompletely established) doctrine of the Shelf itself.

6. *Conclusions and award*: It follows, if I am right, that the claimants succeed as to the subsoil of the territorial waters (including the territorial waters of islands) and that the Sheikh succeeds as to the subsoil of the Shelf; by which I mean in this connection the submarine area contiguous with Abu Dhabi outside the territorial zone; *viz.*, the former is included in the Concession and the latter is not; and I award and declare to that effect.

I would only add in conclusion a word about the Qatar Arbitration over which Lord Radcliffe presided. I have reached a

result in this case which happens closely to correspond with that reached by Lord Radcliffe in that case, on other facts and a different Agreement. There is, in fact, little connection between the two Arbitrations if only because in the Qatar Agreement there was no allusion in the contract to "sea waters" at all. If Lord Radcliffe instead of merely recording his conclusions had expounded the principles on which he had reached them, I should have derived invaluable and authoritative guidance from such an exposition; but as he took the course he did, I am to that extent *inops consilii*, and have only departed from his (perhaps more prudent) method and gone into general principles at the express invitation of the parties; to whose legal representatives I would wish to express my deep indebtedness.

(Signed) ASQUITH OF BISHOPSTONE.

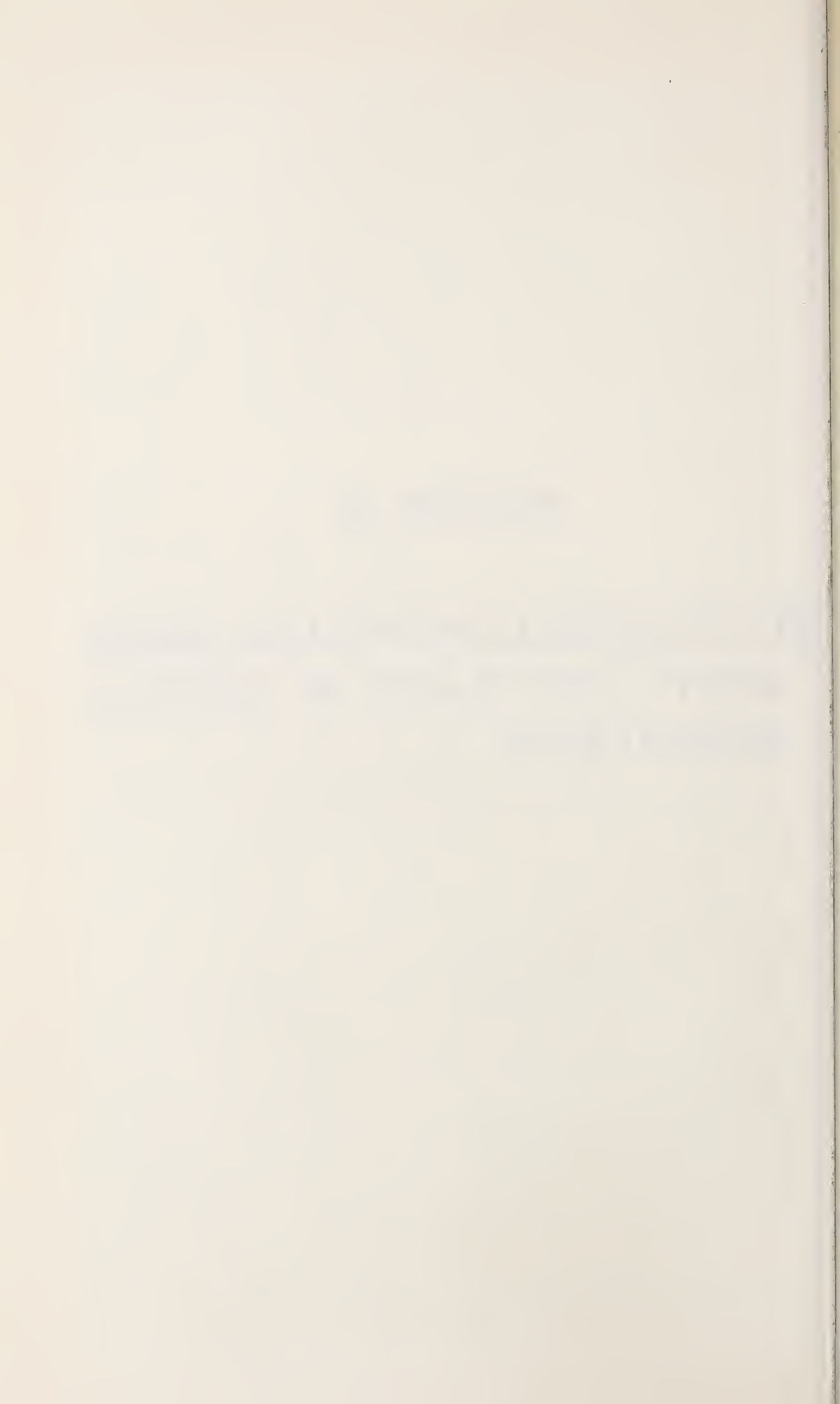
The proceedings were held at 5 Rue le Tasse, Paris, France, from Tuesday, August 21, 1951, to Tuesday, August 28, 1951.

Sir Walter Monckton, K.C.M.G., K.C.V.O., M.C., K.C.; with him Professor H. Lauterpacht, K.C., Mr. G.R.F. Morris, and Mr. R. Dunn (instructed by Messrs. Bischoff & Co., Solicitors, London), appeared on behalf of Petroleum Development (Trucial Coast) Ltd.

Mr. N.R. Fox-Andrews, K.C., with him Professor C.H.M. Waldock, K.C., Mr. Stephen Chapman, and Mr. J.F.E. Stephenson (instructed by Messrs. Holmes, Son & Pott, Solicitors, London), appeared on behalf of His Excellency, the Ruler of Abu Dhabi.

SECTION II

MULTILATERAL PROPOSALS, AGREEMENTS, AND CLAIMS OF GENERAL SIGNIFICANCE



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BIBLIOGRAPHICAL NOTE

The purpose of this note is to cite a number of references for possible use in connection with the documents reproduced in the remainder of PART II of this volume. No attempt has been made to be exhaustive in listing these citations and only those of the most general interest are included. References have generally been restricted to ones published in the English language and to those most likely to be found in libraries accessible to naval officers. Generally excluded are articles appearing in the Department of State Bulletin. Such articles are, however, often of great value and the semi-annual index of the Bulletin can be consulted for pertinent citations. Articles dealing with a specific country will be mentioned under that country in SECTION VI, *infra*, as will be the references to the views of individual countries appearing in International Law Commission documents.

General textbooks on international law and some specialized books contain valuable discussion on the subjects of the high seas, territorial seas, the continental shelf and fisheries. Among general books, see Hyde, *International Law, Chiefly as Interpreted and Applied by the United States* (3 volumes, 2nd Revised Edition, 1945), the leading American text, and Oppenheim's *International Law*, edited by H. Lauterpacht, Vol. I, Peace, (Eighth Edition, 1955), and Volume II, Disputes, War and Neutrality, (Seventh Edition, 1952), the leading British treatise. Another fine American text is Fenwick, *International Law*, (3rd Ed., 1948). The best brief text on the international law of peace is Brierly, *The Law of Nations* (5th Ed., 1955). An excellent concise summary of the law of the sea in time of peace is contained in Part I of *The Law and Custom of the Sea*, by H. A. Smith, 2nd Edition, with Supplement, 1954). Part I of Colombos, *The International Law of the Sea* (3rd Revised Edition, 1954) is also useful. A recent specialized text of value is M. W. Mouton, *The Continental Shelf* (1952). With respect to territorial waters, Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927) is invaluable. See, also, Masterson, *Jurisdiction in Marginal Seas* (1929) and T. W. Fulton, *The Sovereignty of the Sea* (1911). Gidel, *Le droit international public de la mer*, in three volumes, 1932-34, is also highly recommended. There are numerous specialized books dealing with fisheries. Of historical interest is Fenn, *The Origin of the Right of Fishery in Territorial Waters*

(1926). Two recent monographs are especially helpful: Riesenfeld, *Protection of Coastal Fisheries under International Law* (1942) and Leonard, *International Regulation of Fisheries* (1944).

There are numerous notes and comments in the *American Journal of International Law* with respect to developments concerning the continental shelf. Consult Annual Index. Among the articles appearing since 1950 in that Journal on the subject, see Young, "The Legal Status of Submarine Areas beneath the High Seas," 45 *A.J.I.L.* 225 (1951); Boggs, "Delimitation of Seaward Areas under National Jurisdiction," 45 *Ibid.*, 240 (1951), and Kunz, "Continental Shelf and International Law: Confusion and Abuse," 50 *A.J.I.L.* 828 (1956). See also Borchard, "Resources of the Continental Shelf," 40 *Ibid.*, 53 (1946), and note by Bingham, "The Continental Shelf and Marginal Belt," 40 *Ibid.*, 173 (1946). Among valuable articles appearing in other periodicals, see Lauterpacht, "Sovereignty over Submarine Areas," 27 *B.Y.B.* 376 (1950); Boggs, "National Claims in Adjacent Seas," 41 *Geographical Review* 185 (1951); and Waldock, "Legal Basis of Claims to Continental Shelf," 36 *Grotius Society Transactions* 115 (1951).

Useful articles on territorial waters and high seas questions are numerous. In addition to the Lauterpacht article and the two articles by Boggs, *supra*, see Walker, "Territorial Waters: The Cannon Shot Rule," 22 *B.Y.B.* 210 (1945); Kent, "The Historical Origins of the Three-Mile Limit," 48 *A.J.I.L.* 537 (1954); Oda, "The Territorial Sea and Natural Resources," 4 *I.C.L.Q.* 415 (1955); and numerous notes and comments in the *American Journal of International Law*, and the *British Year Book of International Law*. A valuable recent discussion of the law of the sea may be found in McDougal and Schlei, "The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security," 64 *Yale Law Journal* 648 (1955), at pages 655-695. A condensed version by McDougal appears in 49 *A.J.I.L.* 356 (1955). Bishop, "The Exercise of Jurisdiction for Special Purposes in High Seas Areas Beyond the Outer Limit of Territorial Waters," an interesting paper presented to the Inter-American Bar Association in Detroit, 1949, is printed in 99 *Congressional Record* 2586 (March 30, 1953, House of Representatives). Valuable discussions of territorial waters and related questions appear in the 1956 *Proceedings of the American Society of International Law*, by Baxter, Phfister, Whiteman, and others. For a useful comparison of the sea rules with those governing air space over the territorial sea, see Martial, "State Control of the Air Space over the Territorial Sea and the Contiguous Zone," 30 *Canadian Bar Review* 245 (1952).

The articles, notes and comments on fishery problems are legion. Many deal with specific areas or agreements, and will be referred to in connection with such areas and agreements. An important statement of the United States position on fisheries is Chapman, "United States Policy on High Seas Fisheries," 20 *Department of State Bulletin* 67 (1949). See, also, Selak, "Recent Developments in High Seas Fisheries Jurisdiction under the Presidential Proclamation of 1945," 44 *A.J.I.L.* 670 (1950). Compare Allen, "Fishery Proclamation of 1945," 45 *Ibid.*, 177 (1951).

A. United Nations International Law Commission Report on the Law of the Sea (Eighth Session, 1956)

1. NOTE. The final report of the International Law Commission on the Law of the Sea was completed at its eighth session in Geneva (1956). The Report of the Commission on its eighth session was first printed in A/CN.4/104, English, the original being in French. It has been reprinted, with necessary corrections, in General Assembly, *Official Records, Eleventh Session, Supplement No. 9* (A/3159). The text of this latter English translation of the articles on the Law of the Sea is reproduced in full below from A/3159. Selected commentaries to some of the articles are reproduced thereafter. In accordance with past practice, the Report has been published in full in the January, 1957 issue of the *American Journal of International Law* (51 *A.J.I.L.* 154).

The Report was presented to the General Assembly for consideration at its eleventh session in the fall of 1956. The Report is of great importance and deserves the most careful study. The Commission recommended that it be submitted to an international diplomatic conference for possible adoption in one or more international conventions. The General Assembly accepted the recommendation, and the conference will commence 24 February 1958 at Geneva, Switzerland. It is expected to last nine weeks. The special rapporteur on the law of the sea was J.P.A. François of the Netherlands, a member of the Commission. Mr. François submitted numerous drafts on the regime of the high seas and of the territorial sea. Drafts on the high seas are contained in A/CN.4/17 (First Report); A/CN.4/42 (Second Report); A/CN.4/51 (Third Report); A/CN.4/60 (Fourth Report); A/CN.4/69 (Fifth Report); A/CN.4/79 (Sixth Report); and A/CN.4/103 (Supplementary Report). Drafts on the territorial sea are contained in A/CN.4/53 (First Report); A/CN.4/61, and Add. 1, and Add. 1/Corr. 1 (Second Report and annex with report of experts); A/CN.4/77 (Third Report); and A/CN.4/93 (amendments to regime of territorial sea proposed by François). A final report by François on the high seas and territorial sea is contained in A/CN.4/97, and Add. 1, 2, and 3. There is a bibliography on the regime of the high seas in A/CN.4/26, and a valuable memorandum by the Secretariat on the law of the sea in A/CN.4/32, the authorship of which has been attributed to Gidel.

Earlier reports of the International Law Commission dealing with the regime of the sea may be found in A/1316, pages 21-22; A/1858, page 16 and pages 17-20; A/2163, page 12; A/2456, pages 12-19; A/2693, pages 12-21; and A/2934, pages 2-22. Comments of governments on the various drafts are referred to under the individual country, *infra*. Other expressions

of the views of governments may be found in the summary records of the Commission, and in the proceedings of the Sixth Committee of the General Assembly.

Among the outside comments on various drafts may be mentioned Briggs on the earlier continental shelf articles in 45 *A.J.I.L.* (1951), page 338, and Young on the same in 46 *A.J.I.L.* (1952), page 123. Jessup comments on the 1954 report on the territorial sea in 49 *A.J.I.L.* (1953), page 221. Bishop comments favorably on the 1955 fishery articles in 50 *A.J.I.L.* (1956), page 627. See also, Brittin, Article 3, Regime of the Territorial Sea," 50 *A.J.I.L.* 934 (1956). General references to other articles on the subject of the drafts are mentioned in the Bibliographical Note, *supra*. A valuable document providing a guide to the legislative history of the various articles in the Report, with Annexes giving references to the Commission debates and the comments of governments, is the "*Reference Guide to the Articles concerning the Law of the Sea adopted by the International Law Commission at its Eighth Session*," (1956), A/C.6/L.378, a General Assembly publication for the Sixth Committee's eleventh session. See also, *Report of the Sixth Committee to the General Assembly* (A/3520, 6 February 1957), and the *Yearbook of the International Law Commission, 1956*, Vol. I, *Summary records of the eighth session*, and Vol. II, *Documents of the eighth session*. Similar volumes for earlier and subsequent sessions will be published.

2. Text of Articles Concerning the Law of the Sea, as Contained in the United Nations International Law Commission's Final Report on the Law of the Sea, Supplement No. 9 (A/3159)

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Articles Concerning the Law of the Sea

Part I

TERRITORIAL SEA

Section I: General

JURIDICAL STATUS OF THE TERRITORIAL SEA

ARTICLE 1

1. The sovereignty of a State extends to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the conditions prescribed in these articles and by other rules of international law.

JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL

ARTICLE 2

The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to its bed and subsoil.

Section II. Limits of the Territorial Sea

BREADTH OF THE TERRITORIAL SEA

ARTICLE 3

1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.

NORMAL BASELINE

ARTICLE 4

Subject to the provisions of article 5 and to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the low-water line along the coast, as marked on large-scale charts officially recognized by the coastal State.

STRAIGHT BASELINE

ARTICLE 5

1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

2. The coastal State shall give due publicity to the straight baselines drawn by it.

3. Where the establishment of a straight baseline has the effect

of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic.

OUTER LIMIT OF THE TERRITORIAL SEA

ARTICLE 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

BAYS

ARTICLE 7

1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

4. The foregoing provisions shall not apply to so-called "historic" bays or in any cases where the straight baseline system provided for in article 5 is applied.

PORTS

ARTICLE 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

ROADSTEADS

ARTICLE 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must give due publicity to the limits of such roadsteads.

ISLANDS

ARTICLE 10

Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark.

DRYING ROCKS AND DRYING SHOALS

ARTICLE 11

Drying rocks and drying shoals which are wholly or partly within the territorial sea, as measured from the mainland or an island, may be taken as points of departure for measuring the extension of the territorial sea.

DELIMITATION OF THE TERRITORIAL SEA IN STRAITS AND OFF
OTHER OPPOSITE COASTS

ARTICLE 12

1. The boundary of the territorial sea between two States, the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be fixed by agreement between those States. Failing such agreement and unless another boundary line is justified by special circumstances, the boundary is the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured.

2. If the distance between the two States exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if, as a consequence of this delimitation an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.

3. The first sentence of the preceding paragraph shall be applicable to cases where both coasts belong to one and the same coastal State. If, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may be declared by the coastal State to form part of its territorial sea.

4. The line of demarcation shall be marked on the officially recognized large-scale charts.

DELIMITATION OF THE TERRITORIAL SEA AT THE MOUTH OF A RIVER

ARTICLE 13

1. If a river flows directly into the sea, the territorial sea shall be measured from a line drawn *inter fauces terrarum* across the mouth of the river.

2. If the river flows into an estuary the coasts of which belong to a single State, article 7 shall apply.

DELIMITATION OF THE TERRITORIAL SEA OF TWO ADJACENT STATES

ARTICLE 14

1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest points on the baseline from which the breadth of the territorial sea of each country is measured.

2. The boundary line shall be marked on the officially recognized large-scale charts.

Section III: Right of Innocent Passage

Sub-section A: General Rules

MEANING OF THE RIGHT OF INNOCENT PASSAGE

ARTICLE 15

1. Subject to the provisions of the present rules, ships of all States shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for

the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage is innocent so long as the ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law.

4. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

5. Submarines are required to navigate on the surface.

DUTIES OF THE COASTAL STATE

ARTICLE 16

1. The coastal State must not hamper innocent passage through the territorial sea. It is required to use the means at its disposal to ensure respect for innocent passage through the territorial sea and must not allow the said sea to be used for acts contrary to the rights of other States.

2. The coastal State is required to give due publicity to any dangers to navigation of which it has knowledge.

RIGHTS OF PROTECTION OF THE COASTAL STATE

ARTICLE 17

1. The coastal State may take the necessary steps in its territorial sea to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which the admission of those ships to those waters is subject.

3. The coastal State may suspend temporarily in definite areas of its territorial sea the exercise of the right of passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. Should it take such action, it is bound to give due publicity to the suspension.

4. There must be no suspension of the innocent passage of foreign ships through straits normally used for international navigation between two parts of the high seas.

DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE

ARTICLE 18

Foreign ships exercising the right of passage shall comply with the laws and regulations enacted by the coastal State in conformity with the present rules and other rules of international law and, in particular, with the laws and regulations relating to transport and navigation.

Sub-section B: Merchant Ships

CHARGES TO BE LEVIED UPON FOREIGN SHIPS

ARTICLE 19

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may only be levied upon a foreign ship passing through the territorial sea as payment for specific services rendered to the ship.

ARREST ON BOARD A FOREIGN SHIP

ARTICLE 20

1. A coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend beyond the ship; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship lying in its territorial sea or passing through the territorial sea after leaving internal waters.

3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

ARREST OF SHIPS FOR THE PURPOSE OF EXERCISING CIVIL JURISDICTION

ARTICLE 21

1. A coastal State may not arrest or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. A coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving the internal waters.

Sub-section C: Government Ships Other Than Warships

GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES

ARTICLE 22

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES

ARTICLE 23

The rules contained in sub-section A shall apply to government ships operated for non-commercial purposes.

Sub-section D: Warships

PASSAGE

ARTICLE 24

The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18.

NON-OBSERVANCE OF THE REGULATIONS

ARTICLE 25

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which may be brought to its notice, the coastal State may require the warship to leave the territorial sea.

Part II

HIGH SEAS

Section I: General Régime

DEFINITION OF THE HIGH SEAS

ARTICLE 26

1. The term "high seas" means all parts of the sea that are not included in the territorial sea, as contemplated by Part I, or in the internal waters of a State.

2. Waters within the baseline of the territorial sea are considered "internal waters".

FREEDOM OF THE HIGH SEAS

ARTICLE 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

Sub-section A: Navigation

THE RIGHT OF NAVIGATION

ARTICLE 28

Every State has the right to sail ships under its flag on the high seas.

NATIONALITY OF SHIPS

ARTICLE 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship.

2. A merchant ship's right to fly the flag of a State is evidenced by documents issued by the authorities of the State of the flag.

STATUS OF SHIPS

ARTICLE 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

SHIPS SAILING UNDER TWO FLAGS

ARTICLE 31

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

IMMUNITY OF WARSHIPS

ARTICLE 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

IMMUNITY OF OTHER GOVERNMENT SHIPS

ARTICLE 33

For all purposes connected with the exercise of powers on the high seas by States other than the flag State, ships owned or operated by a State and used only on government service, whether commercial or non-commercial, shall be assimilated to and shall have the same immunity as warships.

SAFETY OF NAVIGATION

ARTICLE 34

1. Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea with regard *inter alia* to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The crew which must be adequate to the needs of the ship and enjoy reasonable labour conditions;

(c) The construction, equipment and seaworthiness of the ship.

2. In issuing such regulations, each State is required to observe internationally accepted standards. It shall take the necessary measures to secure observance of the regulations.

PENAL JURISDICTION IN MATTERS OF COLLISION

ARTICLE 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which the accused person is a national.

2. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

DUTY TO RENDER ASSISTANCE

ARTICLE 36

Every State shall require the master of a ship sailing under its

flag, in so far as he can do so without serious danger to the ship, the crew or the passengers.

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

SLAVE TRADE

ARTICLE 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its colours, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its colours, shall *ipso facto* be free.

PIRACY

ARTICLE 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

ARTICLE 39

Piracy consists in any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or against persons or property on board such a ship;

(b) Against a ship, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of incitement or of intentional facilitation of an act described in sub-paragraph (1) or sub-paragraph (2) of this article.

ARTICLE 40

The acts of piracy, as defined in article 39, committed by a government ship or a government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private vessel.

ARTICLE 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

ARTICLE 42

A ship or aircraft may retain its national character although it has become a pirate ship or aircraft. The retention or loss of national character is determined by the law of the State from which the national character was originally derived.

ARTICLE 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

ARTICLE 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

ARTICLE 45

A seizure on account of piracy may only be carried out by war-ships or military aircraft.

RIGHT OF VISIT

ARTICLE 46

1. Except where acts of interference derive from powers con-

ferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's title to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

RIGHT OF HOT PURSUIT

ARTICLE 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State, and may only be continued outside the territorial sea if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea receives the order to stop, the ship giving the order should likewise be within the territorial sea. If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by bearings, sextant angles or other like means, that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, within the contiguous zone. The pursuit may only be commenced after a visual

or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of the present article shall apply *mutatis mutandis*;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

POLLUTION OF THE HIGH SEAS

ARTICLE 48

1. Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

2. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste.

3. All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radioactive materials or other harmful agents.

Sub-section B: Fishing

RIGHT TO FISH

ARTICLE 49

All States have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations and to the

provisions contained in the following articles concerning conservation of the living resources of the high seas.

CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

ARTICLE 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products.

ARTICLE 51

A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged shall adopt measures for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.

ARTICLE 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.

2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

ARTICLE 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other marine resources in the same area, the conservation measures adopted shall be applicable to them.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within a reasonable period of time, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

ARTICLE 54

1. A coastal State has a special interest in the maintenance of

the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there.

3. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

ARTICLE 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That scientific evidence shows that there is an urgent need for measures of conservation;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate against foreign fishermen.

3. If these measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

ARTICLE 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.

2. If no agreement is reached within a reasonable period, such State may initiate the procedure contemplated by article 57.

ARTICLE 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be

submitted for settlement to an arbitral commission of seven members, unless the parties agree to seek a solution by another method of peaceful settlement.

2. Except as provided in paragraph 3, two members of the arbitral commission shall be named by the State or States on the one side of the dispute, and two members shall be named by the State or States contending to the contrary, but only one of the members nominated by each side may be a national of a State on that side. The remaining three members, one of who shall be designated as chairman, shall be named by agreement between the States in dispute. Failing agreement they shall, upon the request of any State party, be nominated by the Secretary-General of the United Nations after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from nationals of countries not parties to the dispute. If, within a period of three months from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named, after such consultation, by the Secretary-General of the United Nations. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

3. If the parties to the dispute fall into more than two opposing groups, the arbitral commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from amongst well qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

4. Except as herein provided the arbitral commission shall determine its own procedure. It shall also determine how the costs and expenses shall be divided between the parties.

5. The arbitral commission shall in all cases be constituted within three months from the date of the original request and shall render its decision within a further period of five months unless it decides, in case of necessity, to extend that time limit.

ARTICLE 58

1. The arbitral commission shall, in the case of measures unilaterally adopted by coastal States, apply the criteria listed in

paragraph 2 of article 55. In other cases it shall apply these criteria according to the circumstances of each case.

2. The arbitral commission may decide that pending its award the measures in dispute shall not be applied.

ARTICLE 59

The decisions of the arbitral commission shall be binding on the States concerned. If the decision is accompanied by any recommendations, they shall receive the greatest possible consideration.

FISHERIES CONDUCTED BY MEANS OF EQUIPMENT EMBEDDED IN THE FLOOR OF THE SEA

ARTICLE 60

The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State, may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals. Such regulations will not, however, affect the general status of the areas as high seas.

Sub-section C: Submarine Cables And Pipelines

ARTICLE 61

1. All States shall be entitled to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

ARTICLE 62

Every State shall take the necessary legislative measures to provide that the breaking or injury of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine high-voltage power cable or pipeline, shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

ARTICLE 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost.

ARTICLE 64

Every State shall regulate trawling so as to ensure that all the fishing gear used shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines.

ARTICLE 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Section II: Contiguous Zone

ARTICLE 66

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to

(a) Prevent infringement of its customs, fiscal or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.

Section III: Continental Shelf

ARTICLE 67

For the purposes of these articles, the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms) or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

ARTICLE 68

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources.

ARTICLE 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 70

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables on the continental shelf.

ARTICLE 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.

5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

ARTICLE 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of

agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured.

ARTICLE 73

Any disputes that may arise between States concerning the interpretation or application of articles 67–72 shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

3. Selected Commentaries by the United Nations International Law Commission on the Articles concerning the Law of the Sea.

NOTE. Published in the report containing Articles concerning the Law of the Sea (A/3159) are the International Law Commission's commentaries on each of the articles. These commentaries also appear in an earlier version in A/CN.4/104 at pages 37–133. The commentaries listed below, taken from A/CN.4/104, have been selected because of their particular bearing on the subject matter of this book. In addition, an excerpt from the introductory material contained therein is also reprinted. The footnotes have been renumbered for use herein.

- a. Excerpt from Introduction—(c) Law of the Sea
- b. Commentary to Article 3 (Breadth of the territorial sea)
- c. Commentary to Article 4 (Normal base line)
- d. Commentary to Article 5 (Straight base line)
- e. Commentary to Article 7 (Bays)
- f. Commentary to Article 10 (Islands)
- g. Commentary to Article 15 (Meaning of the right of innocent passage)
- h. Commentary to Article 17 (Rights of protection of the coastal state)
- i. Commentary to Article 24 (Passage)
- j. Commentary to Article 27 (Freedom of the high seas)
- k. Commentary to Article 49 (Right to fish) including note on Conservation of the living resources of the high seas
- l. Commentary to Article 58 (Criteria for Fisheries Arbitral Commission)
- m. Commentary to Article 66 (Contiguous Zone)
- n. Introductory Note on the Continental Shelf
- o. Commentary to Article 71 (Rights and limitations concerning the Continental Shelf)
- p. Commentary to Article 73 (Settlement of disputes over Continental Shelf)

a. EXCERPT FROM INTRODUCTION TO REPORT—

(c) LAW OF THE SEA

22. In pursuance of General Assembly resolution 899 (IX) of 14 December 1954, the Commission has grouped together systematically all the rules it has adopted concerning the high seas, the territorial sea, the continental shelf, the contiguous zone and the conservation of the living resources of the sea. In consequence of this re-arrangement the Commission has had to make certain changes in the texts adopted.

23. The final report on the subject is in two parts, the first dealing with the territorial sea and the second with the high seas. The second part is divided into three sections: (1) general regime of the high seas; (2) contiguous zone; (3) continental shelf. Each article is accompanied by a commentary.

24. The Commission wishes to preface the text of the articles adopted by certain observations as to the way in which it considers that practical effect should be given to these rules.

25. When the International Law Commission was set up, it was thought that the Commission's work might have two different aspects: on the one hand "the codification of international law" or, in the words of article 15 of the Commission's statute, "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine": and on the other hand, "the progressive development of international law" or "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States."

26. In preparing its rules on the law of the sea, the Commission has become convinced that, in this domain at any rate, the distinction established in the Statute between those two activities can with difficulty be maintained. Not only may there be wide differences of opinion as to whether a subject is already "sufficiently developed in practice", but also several of the provisions adopted by the Commission, based on a "recognized principle of international law", have been framed in such a way as to place them in the "progressive development" category. Although it tried at first to specify which articles fell into one and which into the other category, the Commission has had to abandon the attempt, as several do not wholly belong to either.

27. In these circumstances, in order to give effect to the project as a whole, it will be necessary to have recourse to conventional means.

28. The Commission therefore recommends, in conformity with article 23, paragraph 1 (d) of its Statute, that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate.

29. The Commission is of the opinion that the conference should deal with the various parts of the law of the sea covered by the present report. Judging from its own experience, the Commission considers—and the comments of governments have confirmed this view—that the various sections of the law of the sea hold together, and are so closely inter-dependent that it would be extremely difficult to deal with only one part and leave the others aside.

30. The Commission considers that such a conference has been adequately prepared for by the work the Commission has done. The fact that there have been fairly substantial differences of opinion on certain points should not be regarded as a reason for putting off such a conference. There has been widespread regret that the attitude of governments after the Hague Codification Conference of 1930 in allowing the disagreement over the breadth of the territorial sea to dissuade them from any attempt at concluding a convention on the points on which agreement had been reached. The Commission expresses the hope that this mistake will not be repeated.

31. In recommending confirmation of the proposed rules as indicated in paragraph 22, the Commission has not had to concern itself with the question of the relationship between the proposed rules and existing conventions. The answer to that question must be found in the general rules of international law and the provisions drawn up by the proposed international conference.

32. The Commission also wishes to make two other observations, which apply to the whole draft:

1. The draft regulates the law of the sea in time of peace only.

2. The term "mile" means nautical mile (1,852 metres) reckoned at sixty to one degree of latitude.

33. The text of the articles concerning the law of the sea, as

adopted by the Commission,⁽¹⁾ and the Commission's commentary to the articles are reproduced below.

* * * * *

b. COMMENTARY TO ARTICLE 3

(1) At its seventh session the Commission had adopted certain guiding principles concerning the limits of the territorial sea, but before drafting the final text of an article on this subject, it had wished to see the comments of governments.

(2) First of all, the Commission had recognized that international practice was not uniform as regards the traditional limitation of the territorial sea to three miles. In the opinion of the Commission, that was an incontrovertible fact.

(3) Next the Commission had stated that international law did not justify an extension of the territorial sea beyond twelve miles. In its opinion, such an extension infringed the principle of the freedom of the seas, and was therefore contrary to international law.

(4) Finally the Commission had stated that it took no decision as to the breadth of the territorial sea up to the limit of twelve miles. Some members held that as the rule fixing the breadth at three miles had been widely applied in the past and was still maintained by a number of important maritime States, it should, in the absence of any other rule of equal authority, be regarded as recognized by international law and binding on all States. That view was not supported by the majority of the Commission; at its seventh session, however, the Commission did not succeed in reach-

⁽¹⁾ Sir Gerald Fitzmaurice (United Kingdom) expressed his dissent from (1) the final paragraph of the commentary to article 3, in so far as it might suggest that the breadth of the territorial sea was not governed by any existing rule of international law; (2) article 24, in so far as it made the right of innocent passage of warships subject to prior notification or authorization. He recorded an abstention on those parts of article 47 (right of hot pursuit) and the commentary thereto, that related to the question of hot pursuit from within a contiguous zone.

Mr. Krylov (U.S.S.R.) was not able to vote for articles 3 (breadth of the territorial sea), 22 (government ships operated for commercial purposes), article 39 (piracy), 57 (compulsory arbitration) and 73 (compulsory jurisdiction). Mr. Zourek (Czechoslovakia), while having voted for the draft articles relating to the law of the sea as a whole, does not accept, for reasons indicated during the discussions, articles 3 (breadth of the territorial sea), and 22 (government ships operated for commercial purposes). He also maintained his reservations regarding article 7 (bays). He remains opposed to articles 57, 59 and 73 relating to compulsory arbitration; he maintains his reservations regarding the definition of piracy as defined in article 39 and does not accept the commentary relating to that article.

ing agreement on any other limit. The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law. Such an extension would be valid for any other State which did not object to it, and *a fortiori* for any State which recognized it tacitly or by treaty, or was a party to a judicial or arbitral decision recognizing the extension. A claim to a territorial sea not exceeding twelve miles in breadth could be sustained *erga omnes* by any State, if based on historic rights. But, subject to such cases, the Commission by a small majority declined to question the right of other States not to recognize an extension of the territorial sea beyond the three-mile limit.

(5) At its eighth session, the Commission resumed its study of this problem in the light of the comments by governments. Those comments showed a wide diversity of opinion, and the same diversity was noted within the Commission. Several proposals were made; they are referred to below in the order in which they were put to the vote. Some members were of the opinion that it was for each coastal State, in the exercise of its sovereign powers, to fix the breadth of its territorial sea. They considered that in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law; this would cover the case of those States which had fixed the breadth at between three and twelve miles. Another opinion was that the Commission should recognize that international practice was not uniform as regards limitation of the territorial sea to three miles, but would not authorize an extension of the territorial sea beyond twelve miles. On the other hand every State would have the right to extend its jurisdiction up to twelve miles. A third opinion was that the Commission should recognize that every coastal State was entitled to a territorial sea of a breadth of at least three, but not exceeding twelve miles. If, within those limits, the breadth was not determined by long usage, it should not exceed what was necessary for satisfying the justifiable interests of the State, taking into account also the interests of the other States in maintaining the freedom of the high seas and the breadth generally applied in the region. In case of a dispute, the question should, at the request of either of the parties, be referred to the International Court of Justice. A fourth opinion was reflected in a proposal to state that the breadth of the territorial sea could be determined by the coastal State in accordance with its economic and strategic needs within the limits of three and twelve miles, subject to recognition by States maintaining a narrower belt.

According to a fifth opinion and proposal, the breadth of the territorial sea would be three miles, but a greater breadth should be recognized if based on customary law. Furthermore, any State might fix the breadth of its territorial sea at a higher figure than three miles, but such an extension could not be claimed against States which had not recognized it or had not adopted an equal or greater breadth. In no case could the breadth of the territorial sea exceed twelve miles.

(6) None of these proposals managed to secure a majority in the Commission, which, while recognizing that it differs in form from the other articles, finally accepted, by a majority vote, the text included in these regulations as article 3.

(7) The Commission noted that the right to fix the limit of the territorial sea at three miles was not disputed. It states that international law does not permit that limit to be extended beyond twelve miles. As regards the right to fix the limit at between three and up to twelve miles, the Commission was obliged to note that international practice was far from uniform. Since several States have established a breadth of between three and up to twelve miles, while others are not prepared to recognize such extensions, the Commission was unable to take a decision on the subject, and expressed the opinion that the question should be decided by an international conference of plenipotentiaries.

(8) It follows from the foregoing that the Commission came out clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardizes the principle that has governed maritime law since Grotius, namely, the freedom of the high seas. On the other hand, the Commission did not succeed in fixing the limit between three and up to twelve miles.

(9) The Commission considered the possibility of adopting a rule that all disputes concerning the breadth of the territorial sea should be submitted to the compulsory jurisdiction of the International Court of Justice. The majority of the Commission, however, were unwilling to ask the Court to undertake the settlement of disputes on a subject regarding which the international community had not yet succeeded in formulating a rule of law. It did not wish to delegate an essentially legislative function to a judicial organ which, moreover, cannot render decisions binding on States other than the parties. For those reasons it considered that the question should be referred to the proposed conference.

c. COMMENTARY TO ARTICLE 4

(1) The Commission was of the opinion that, according to the international law in force, the extent of the territorial sea is

measured either from the low-water line along the coast, or, in the circumstances envisaged in article 5, from straight baselines independent of the low-water mark. This is how the Commission interprets the judgment of the International Court of Justice rendered on 10 December 1951 in the Fisheries Case between the United Kingdom and Norway.²

(2) The traditional expression "low-water mark" may have different meanings; there is no uniform standard by which States in practice determine this line. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on large-scale charts officially recognized by the coastal State. The Commission is of the opinion that the omission of detailed provisions such as were prepared by the 1930 Codification Conference is hardly likely to induce governments to shift the low-water lines on their charts unreasonably.

d. COMMENTARY TO ARTICLE 5

(1) The International Court of Justice, in its decision regarding the Fisheries Case between the United Kingdom and Norway, considered that where the coast is deeply indented or cut into, or where it is bordered on an insular formation such as the *Skjaergaard* in Norway, the baseline becomes independent of the low-water mark and can only be determined by means of a geometric construction. The Court said:

"In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions. . . .

"The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight baselines method and that they have not encountered objections of principle

² International Court of Justice, Reports, 1951, p. 116.

by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters.”³

(2) The Commission interpreted the Court's judgment, which was delivered on the point in question by a majority of 10 votes to 2, as expressing the law in force; it accordingly drafted the article on the basis of this judgment. It felt, however, that certain rules advocated by the group of experts who met at The Hague in 1953 (see introduction to chapter II, paragraph 17 above) might serve to round off the criteria adopted by the Court. Consequently, at its sixth session, it inserted the following supplementary rules in the second paragraph of the article:

“As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Baselines shall not be drawn to and from drying rocks and shoals.”

Some governments raised objections to this second paragraph, arguing that the maximum length of ten miles for baselines and the maximum distance from the coast of five miles seemed arbitrary and, moreover, not in conformity with the Court's decision. Against this certain members of the Commission pointed out that the Commission had drafted these provisions for application “as a general rule” and that it would always be possible to depart from them if special circumstances justified doing so. In the opinion of those members, the criteria laid down by the Court were not sufficiently precise for general application. However, at its seventh session in 1955, after further study of the question the Commission decided, by a majority, that the second paragraph should be deleted so as not to make the provisions of the first paragraph too mechanical. Only the final sentence was kept and added to the first paragraph.

³ *Ibid.*, pp. 129 and 130. The first paragraph of the quotation is a new translation by the Registry of the Court [Ed.]

(4) At this same session, the Commission made a number of changes designed to bring the text even more closely into line with the Court's judgment in the above-mentioned Fisheries Case. In particular it inserted in the first sentence the words: "or where this is justified by economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage." Some governments stated in their comments on the 1955 text that they could not support the insertion of "economic interests" in the first sentence of the article. In their opinion, this reference to economic interests was based on a misinterpretation of the Court's judgment. The interests taken into account in the judgment were considered solely in the light of the historical and geographical factors involved and should not constitute a justification in themselves. The application of the straight baseline system should be justified in principle on other grounds before purely local economic considerations could justify a particular way of drawing the lines.

(5) Although this interpretation of the judgment was not supported by all the members, the great majority of the Commission endorsed this view at the eighth session, and the article was recast in that sense.

(6) The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was however prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right.

(7) Straight baselines may be drawn only between points situated on the territory of a single State. An agreement between two States under which such baselines were drawn along the coast and connecting points situated on the territories of different States, would not be enforceable against other States.

(8) Straight baselines may be drawn to islands situated in the immediate vicinity of the coast, but not to drying rocks and drying shoals. Only rocks or shoals permanently above sea level may be used for this purpose. Otherwise the distance between the baselines and the coast might be extended more than is required to fulfil the purpose for which the straight baseline method is applied,

and, in addition, it would not be possible at high tide to sight the points of departure of the baselines.

e. COMMENTARY TO ARTICLE 7

(1) The first paragraph, which is taken from the report of the committee of experts mentioned above, lays down the conditions that must be satisfied by an indentation or curve in order to be regarded as a bay. In adopting this provision, the Commission repaired the omission to which attention had already been drawn by The Hague Codification Conference of 1930 and which the International Court of Justice again points out in its judgment in the Fisheries Case. Such an explanation was necessary in order to prevent the system of straight baselines from being applied to coasts whose configuration does not justify it, on the pretext of applying the rules for bays.

(2) If, as a result of the presence of islands, an indentation whose features as a "bay" have to be established has more than one mouth, the total length of the lines drawn across all the different mouths will be regarded as the width of the bay. Here, the Commission's intention was to indicate that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify some alteration in the ratio between the width and the penetration of the indentation. In such a case an indentation which, if it had no islands at its mouth, would not fulfill the necessary conditions, is to be recognized as a bay. Nevertheless, islands at the mouth of a bay cannot be considered as "closing" the bay if the ordinary sea route passes between them and the coast.

(3) The Commission discussed at length the question of the conditions under which the waters of a bay can be regarded as internal waters. The majority considered that it was not sufficient to lay down that the waters must be closely linked to the land domain by reason of the depth of penetration of the bay into the mainland, or otherwise by its configuration, or by reason of the utility the bay might have from the point of view of the economic needs of the country. These criteria lack legal precision.

(4) The majority of the Commission took the view that the maximum length of the closing line must be stated in figures and that a limitation based on geographical or other considerations, which would necessarily be vague, would not suffice. It considered, however, that the limit should be more than ten miles. Although not prepared to establish a direct relationship between the length of the closing line and the breadth of the territorial sea—such a relationship was formally denied by certain members of the Com-

mission—it felt bound to take some account of tendencies to extend the breadth of the territorial sea by lengthening the closing line of bays. As an experiment the Commission suggested, at its seventh session, a distance of twenty-five miles; thus, the length of the closing line would be slightly more than twice the permissible maximum breadth of the territorial sea as laid down in paragraph 2 of article 3. Since, firstly, historic bays, some of which are wider than twenty-five miles, would not come under the article and since, secondly, the provision contained in paragraph 1 of the article concerning the characteristics of a bay was calculated to prevent abuse, it seemed not unlikely that some extension of the closing line would be more readily accepted than an extension of the breadth of the territorial sea in general. At the seventh session, the majority of the Commission rejected a proposal that the length of the closing line should be set at twice the breadth of the territorial sea, primarily because it considered such a delimitation unacceptable to States that have adopted a breadth of three or four miles for their territorial sea. At its eighth session the Commission again examined this question in the light of replies from governments. The proposal to extend the closing line to twenty-five miles had found little support; a number of governments stated that, in their view, such an extension was excessive. By a majority, the Commission decided to reduce the twenty-five miles figure, proposed in 1955 to fifteen miles. While appreciating that a line of ten miles had been recognized by several governments and established by international conventions, the Commission took account of the fact that the origin of the ten-mile line dates back to a time when the breadth of the territorial sea was much more commonly fixed at three miles than it is now. In view of the tendency to increase the breadth of the territorial sea, the majority in the Commission thought that an extension of the closing line to fifteen miles would be justified and sufficient.

(5) If the mouth of a bay is more than fifteen miles wide, the closing line will be drawn within the bay at the point nearest to the sea where the width does not exceed that distance. Where more than one line of fifteen miles in length can be drawn, the closing line will be so selected as to enclose the maximum water area within the bay. The Commission believes that other methods proposed for drawing this line give rise to uncertainties that will be avoided by adopting the above method, which is that proposed by the above-mentioned committee of experts.

(6) Paragraph 4 states that the foregoing provisions shall not apply to “historic” bays.

(7) The Commission felt bound to propose only rules applicable

to bays the coasts of which belong to a single State. As regards other bays, the Commission has not sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them.

f. COMMENTARY TO ARTICLE 10

(1) This article applies both to islands situated in the high seas and to islands situated in the territorial sea. In the case of the latter, their own territorial sea will partly coincide with the territorial sea of the mainland. The presence of the island will create a bulge in the outer limit of the territorial sea of the mainland. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, shall be taken into consideration in determining the outer limit of the territorial sea.

(2) An island is understood to be any area of land surrounded by water which, except in abnormal circumstances, is permanently above the high-water mark. Consequently, the following are not considered islands and have no territorial sea:

(i) Elevations which are above water at low tide only. Even if an installation is built on such an elevation and is itself permanently above water—a lighthouse, for example—the elevation is not an “island” as understood in this article;

(ii) Technical installations built on the sea-bed, such as installations used for the exploitation of the continental shelf (see article 71). The Commission nevertheless proposed that a safety zone around such installations should be recognized in view of their extreme vulnerability. It does not consider that a similar measure is required in the case of lighthouses.

(3) The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission was unable to overcome the difficulties involved. The problem is singularly complicated by the different forms it takes in different archipelagos. The Commission was prevented from stating an opinion, not only by disagreement on the breadth of the territorial sea, but also by lack of technical information on the subject. It recognizes the importance of this question and hopes that if an international conference subsequently studies the proposed rules it will give attention to it.

(4) The Commission points out, for purposes of information, that article 5 may be applicable to groups of islands lying off the coast.

g. COMMENTARY TO ARTICLE 15

(1) This article lays down that ships of all States including fishing boats have the right of innocent passage through the territorial sea. It reiterates a principle recognized by international law and confirmed by the 1930 Codification Conference.

(2) According to paragraph 2 the general rule recommended for ships passing through the territorial sea is equally applicable to ships proceeding to or from ports. In the latter cases, however, certain restrictions are necessary: these are mentioned in article 20, paragraph 2 and article 21, paragraph 3.

(3) For the right in question to be claimable, passage must in fact be innocent. It will not be innocent if the ship commits any of the acts referred to in paragraph 3. This paragraph follows the lines of that included in article 5 of the rules proposed by Sub-Committee II of the 1930 Codification Conference. The Commission considered that "fiscal interests of the State"—a term which, according to the 1930 comments, should be interpreted very broadly as including all matters relating to customs and to import, export and transit prohibitions—could be regarded as being included in the more general expression used in paragraph 3. The term covers *inter alia* questions relating to customs and health as well as the interests enumerated in the comment to article 18.

(4) Paragraph 3 contains only general criteria and does not go into details. There was therefore no need to mention the case—to which attention has been specially drawn—of ships using the territorial sea for the express purpose of defeating import and export controls and contravening the customs regulations of the coastal State ("hovering ships"). The Commission considers, however, that passage undertaken for this purpose cannot be regarded as innocent.

(5) Under the 1955 draft, the provision in paragraph 5 was inserted only in the sub-section on warships. It has been transferred to the general sub-section in order to make it equally applicable to commercial submarines, if these ships are ever re-introduced.

h. COMMENTARY TO ARTICLE 17

(1) This article recognizes the right of the coastal State to verify the innocent character of the passage, if need should arise, and to take the necessary steps to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law. The Second Committee of the 1930 Codification

Conference used the expression "public order" in this context. The Commission prefers to avoid this expression, which is open to various interpretations.

(2) In exceptional cases a temporary suspension of the right of passage is permissible if compelling reasons connected with general security require it. Although it is arguable that this power was in any case implied in paragraph 1 of the article, the Commission considered it desirable to mention it expressly in a third paragraph which specifies that only a temporary suspension in definite areas is permissible. The Commission is of the opinion that the article states the international law in force.

(3) The Commission also included a clause formally prohibiting interference with passage through straits used for navigation between two parts of the high seas. The expression "straits used for international navigation between two parts of the high seas" was suggested by the decision of the International Court of Justice in the Corfu Channel Case. The Commission, however, was of the opinion that it would be in conformity with the Court's decision to insert the word "normally" before the word "used".

(4) The question was asked what would be the legal position of straits forming part of the territorial sea of one or more States and constituting the sole means of access to a port of another State. The Commission considers that this case could be assimilated to that of a bay whose inner part and entrance from the high seas belong to different States. As the Commission felt bound to confine itself to proposing rules applicable to bays, wholly belonging to a single coastal State, it also reserved consideration of the above-mentioned case.

i. COMMENTARY TO ARTICLE 24

(1) At its sixth session in 1954, the Commission took the view that passage should be granted to warships without prior authorization or notification. At its seventh session in 1955, after noting the comments of certain governments and reviewing the question, the Commission felt obliged to amend this article so as to stress the right of the coastal State to make the right of passage of warships through the territorial sea subject to previous authorization or notification. Where previous authorization is required, it should not normally be subject to conditions other than those laid down for merchant ships in articles 17 and 18. In certain parts of the territorial sea, or in certain special circumstances, the coastal State may, however, deem it necessary to limit the right of passage more strictly in the case of warships than in that of

merchant ships. The 1955 article provides a clearer recognition of this right than the 1954 text.

(2) The Commission reconsidered this matter at its eighth session, in the light of the comments of certain governments, which pointed out that in practice passage was effected without formality and without objection on the part of coastal States. The majority of the Commission, however, saw no reason to change its view. While it is true that a larger number of States do not require previous authorization or notification, the Commission can only welcome this attitude, which displays a laudable respect for the principle of freedom of communications, but this does not mean that a State would not be entitled to require such notification or authorization if it deemed it necessary to take this precautionary measure. Since it admits that the passage of warships through the territorial sea of another State can be considered by that State as a threat to its security, and is aware that a number of States do require previous notification or authorization, the Commission is not in a position to dispute the right of States to take such a measure. But so long as a State has not enacted—and duly published—a restriction upon the right of passage of foreign warships through its territorial sea, such ships may pass through those waters without previous notification or authorization provided that they do not lie in them or put in at a port. In these latter cases previous authorization—except in cases of putting in through stress of weather—is always required. The Commission did not consider it necessary to insert an express stipulation to this effect since article 15, paragraph 4, applies equally to warships.

(3) The right of the coastal State to restrict passage is more limited in the case of passage through straits. The International Court of Justice in its judgment of 9 April 1949 in the Corfu Channel Case says:

“It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.”⁴

⁴ I.C.J., Reports, 1949, p. 28.

(4) The Commission relied on that judgment of the Court when inserting in the 1955 draft, a second paragraph worded as follows:

“It may not interfere in any way with innocent passage through straits normally used for international navigation between two parts of the high seas.”

It was pointed out at the eighth session that this second paragraph was unnecessary, as paragraph 4 of article 17, which forms part of sub-section A entitled “General Rules”, was applicable to warships. The majority of the Commission supported the view that the second paragraph of the article included in 1955 was not strictly necessary. In deleting this paragraph the Commission, in order to avoid any misunderstanding on the subject, nevertheless wishes to state that article 24, in conjunction with paragraph 4 of article 17, must be interpreted to mean that the coastal State may not interfere in any way with the innocent passage of warships through straits normally used for international navigation between two parts of the high seas; hence the coastal State may not make the passage of warships through such straits subject to any previous authorization or notification.

(5) The article does not affect the rights of States under a convention governing passage through the straits to which it refers.

j. COMMENTARY TO ARTICLE 27

(1) The principle generally accepted in international law that the high seas are open to all nations governs the whole regulation of the subject. No State may subject any part of the high seas to its sovereignty; hence no State may exercise jurisdiction over any such stretch of water. States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States. Freedom to fly over the high seas is expressly mentioned in this article because the Commission considers that it follows directly from the principle of the freedom of the sea; the Commission has, however, refrained from formulating rules on air navigation, since the task it set itself in the present phase of its work is confined to the codification and development of the law of the sea.

(2) The list of freedoms of the high seas contained in this article is not restrictive. The Commission has merely specified four of the main freedoms, but it is aware that there are other freedoms, such as freedom to undertake scientific research on the high seas—a freedom limited only by the general principle stated in the third sentence of the first paragraph of the commentary to

the present article. The Commission has not made specific mention of the freedom to explore or exploit the subsoil of the high seas. It considered that apart from the case of the exploitation or exploration of the soil or subsoil of a continental shelf—a case dealt with separately in Section III below—such exploitation had not yet assumed sufficient practical importance to justify special regulation.

(3) Nor did the Commission make any express pronouncement on the freedom to undertake nuclear weapon tests on the high seas. In this connexion the general principle enunciated in the third sentence of this comment is applicable. In addition, the Commission draws attention to article 48, paragraphs 2 and 3, of these articles. The Commission did not however wish to prejudge the findings of the Scientific Committee set up under General Assembly Resolution 913 (X) of 3 December 1955 to study the effects of atomic radiation.

(4) The term “submarine cables” applies not only to telegraph and telephone cables, but also to high-voltage power cables.

(5) Any freedom that is to be exercised in the interests of all entitled to enjoy it, must be regulated. Hence, the law of the high seas contains certain rules, most of them already recognized in positive international law, which are designed, not to limit or restrict the freedom of the high seas, but to safeguard its exercise in the interests of the entire international community. These rules concern particularly:

- (1) The right of States to exercise their sovereignty on board ships flying their flag;
- (2) The exercise of certain policing rights;
- (3) The rights of States relative to the conservation of the living resources of the high seas;
- (4) The institution by coastal States of a zone contiguous to their shores for the purpose of exercising certain well-defined rights;
- (5) The rights of coastal States with regard to the continental shelf.

(6) These matters form the subject of the present articles.

k. COMMENTARY TO ARTICLE 49

(1) This article confirms the principle of the right to fish on the high seas. The Commission admitted no exceptions to that principle in the parts of the high seas covering the continental shelf, save as regards sedentary fisheries and fisheries carried on by means of equipment embedded in the sea floor (see article 60).

Nor did it recognize the right to establish a zone contiguous to the coasts where fishing could be exclusively reserved to the nationals of the coastal State. The principle of the freedom of the seas does not, however, preclude regulations governing the conservation of the living resources of the high seas, as recommended by the Commission in articles 50–59. States may still conclude conventions for the regulation of fishing but the treaty obligations arising out of such conventions are, of course, binding only on the signatory States.

(2) In articles 49, 51, 52, 53, 54 and 56 the term “nationals” denotes fishing boats having the nationality of the State concerned, irrespective of the nationality of the members of their crews.

CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

(1) At its third session, in 1951, the Commission provisionally adopted, under the title of “Resources of the Sea”, articles relating to the conservation of the living resources of the sea. This question was discussed in conjunction with the continental shelf, because certain claims to sovereignty over the waters covering the continental shelf arise, at least in part, out of the coastal State’s desire to give effective protection to the living resources of the sea adjacent to its shores.

(2) At its fifth session, in 1953, the Commission reviewed the articles adopted in 1951 in the light of the comments made by certain governments, and thereafter adopted a set of draft articles reproduced in its report on the work of its fifth session.⁵

(3) In adopting these articles, the Commission adhered to the provisional draft of the articles formulated in 1951. It recognized that the existing law on the subject provided no adequate protection of marine fauna against waste or extermination. The above-mentioned report states that the resulting position constitutes, in the first instance, a danger to the food supply of the world. Also, in so far as it renders the coastal State or the States directly interested helpless against wasteful and predatory exploitation of fisheries by foreign nationals, it constitutes an inducement to the State or States in question to resort to unilateral measures of self-protection, which are sometimes at variance with the law as it stands at present, because they result in the total exclusion of foreign nationals.

(4) The articles adopted by the Commission in 1953 were intended to provide the basis for a solution of the difficulties inherent

⁵ *Official Records of the General Assembly, Eighth Session, Supplement No. 9, (A/2456), paragraph 94.*

in the existing situation. If the nationals of one State only were engaged in fishing in the areas in question, that State could fully achieve the desired object by adopting appropriate legislation and enforcing its observance. If nationals of several States were engaged in fishing in a given area, the concurrence of those States was essential; article 1 of the Commission's draft provided therefore that the States concerned would prescribe the necessary measures by agreement. Article 3 of the draft was intended to provide effectively for the contingency of the interested States being unable to reach agreement. It provided that States would be under a duty to accept as binding any system of regulation of fisheries in any area of the high seas which an international authority, to be created within the framework of the United Nations, prescribed as being essential for the purpose of protecting the fishing resources of that area against waste or extermination.

(5) The General Assembly, at its ninth session (resolution 900 (IX) of 14 December 1954), recognized the great importance of the question of the conservation of the living resources of the sea in connexion with the work of the International Law Commission on the regime of the high seas. It decided to convene an international technical conference at the headquarters of the United Nations Food and Agriculture Organization in Rome on 18 April 1955 to study the technical and scientific aspects of the problem of the international conservation of the living resources of the sea. The report of the Conference was to be referred to the International Law Commission "as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report which it is to prepare pursuant to resolution 899 (IX) of 14 December 1954".

(6) At its seventh session, in 1955, the International Law Commission took note of the report of the Conference⁶ with great interest. Mr. García Amador, then Vice-Chairman of the Commission, who had represented the Cuban Government and acted as Deputy Chairman at the Rome Conference, submitted to the Commission a series of draft articles, prefaced by a preamble, to replace the articles approved by the Commission in 1953.

(7) The Commission made a careful study of these draft articles and found them generally acceptable, although it introduced certain amendments.

(Paragraph 8 omitted—See A/2934, pages 13–14.)

⁶ See *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, Rome, 18 April–10 May 1955*. (A/Conf. 10/6).

(9) The articles are also included as articles 25–33 in the draft text on the régime of the high seas adopted by the Commission at that session. Articles 25, 26 and 27 broadly reproduce the principles laid down in the first two articles of the 1953 text. The idea of an international body with legislative powers was dropped and replaced by that of compulsory arbitration in case of dispute. (Article 31).

(10) From the beginning of its work, the Commission has considered the question whether the position of coastal States as regards measures for the conservation of the living resources in parts of the high seas adjacent to their coasts did not call for some form of recognition by other States. A proposal was submitted in 1951 to the effect that a coastal State should be empowered to lay down conservatory regulations to be applied in such zones, provided any disputes arising out of the application of the regulations were submitted to arbitration. Votes being equally divided on this proposal, the Committee decided to mention it in its report without sponsoring it. The Commission did not include such a provision in its 1953 draft.

(11) At the 1955 Rome Conference, the tendency to make coastal States responsible for controlling zones adjacent to their coasts and applying in them measures of conservation consistent with the general technical principles adopted by the Conference, was again in evidence, and the same idea underlay the proposal submitted to the Commission by Mr. Garcia-Amador at the seventh session. The granting of special rights to coastal States on the ground of their special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to their coasts was linked in that proposal with the obligation to resort to arbitration if the exercise of those rights gave rise to objection by other interested States.

(12) At its seventh session, the Commission adopted two articles,—28 and 29—designed to protect the special interests of coastal States. The first of these articles stated that a coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there. The second article stipulated that a coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its coasts may adopt unilaterally whatever measures of conservation are appropriate in the area where this interest exists, provided that negotiations with the other States concerned

have not led to an agreement within a reasonable period of time and also subject to the provisions of paragraph 2 of article 29. The two articles provided for compulsory arbitration in the event of differences of opinion between the States concerned.

(13) These two articles in particular gave rise to further discussion in the Commission at its eighth session.

(14) Some members were of the opinion that these articles did not adequately protect the interests of coastal States. They argued that the coastal State, by the mere fact of being coastal, possesses a special interest in maintaining the productivity of the living resources in a part of the area adjacent to its coasts. In their view, this opinion, which was in any case already contained in the preamble to the articles in the annex to chapter II of the report on the work of the seventh session, should be clearly expressed in the draft. This opinion was shared by the majority of the Commission, and articles 28 and 29 were recast. The "special" character of the interest of the coastal State should be interpreted in the sense that the interest exists by reason of the sole fact of the geographical situation. However, the Commission did not wish to imply that the "special" interest of the coastal State would take precedence *per se* over the interests of the other States concerned.

(15) Unlike the 1953 draft, the articles in question contain no express limitation of the breadth of the zone where the coastal State may claim its rights. The fact that the coastal State's right is based on its special interest in maintaining the living resources, implies that any extension of this zone beyond the limits within which such an interest may be supposed to exist would exceed the purpose of the provision.

(16) At its earlier sessions the Commission had used the expression "area of the high seas *contiguous* to its coasts", and the same term was used by the Rome Conference. At its eighth session the Commission, wishing to avoid any confusion with the "contiguous zone" provided for under article 66 of the present articles, replaced the term "contiguous" in the articles concerning the protection of the living resources of the sea, by "adjacent". This modification does not imply any change in the meaning of the rules adopted.

(17) The insertion of a compulsory arbitration clause was opposed by some members of the Commission at both the seventh and eighth sessions. They expressed the opinion that the Commission, whose task was the codification of law, should not concern itself with safeguards for the application of the rules. In any case, it would be impossible to do so at the present stage, and the

study of the question would have to be deferred to later sessions. Other members were of opinion that it would be sufficient, as regards disputes arising from the interpretation and application of the articles concerned, to refer to existing provisions imposing on States an obligation to seek a settlement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, reference to regional bodies, or other peaceful means, and they made a proposal to insert a provision on this subject in the draft.

(18) The majority of the Commission did not share this view. Without claiming that all rules prepared by the Commission should be accompanied by compulsory jurisdiction or arbitration clauses, it felt that in proposing for States rights over the high seas going beyond existing international law, the Commission could not rely upon the due functioning of the general rules for the peaceful settlement of disputes, but would have to create effective safeguards for the settlement of disputes by an impartial authority. Hence the majority of the Commission did not wish merely to grant States the rights in question and leave the matter of the settlement of disputes open for future consideration. While recognizing that the settlement of disputes must be sought by the means indicated in the general rule proposed by certain members, it felt that in this matter it would not be enough to have a general clause of that kind which did not guarantee that, if necessary, disputes would in fact be submitted to an impartial authority for decision. For this reason, the majority of the Commission accepted the idea of compulsory arbitration, the procedure for which is laid down in article 57.

(19) The 1953 proposal to establish a central authority with legislative powers was not adopted; on the other hand, consideration was given to the possibility of setting up a permanent international body within the framework of the United Nations, with the status of a specialized agency, to be responsible not only for making technical and scientific studies of problems concerning the protection and use of living resources of the sea, but also for settling disputes between States on this subject. The Commission is of the opinion that the establishment of an international study commission is worthy of close attention. It considers, however, that in view of the diversity of the interests which may be involved in such disputes, the idea of ad hoc arbitral commissions would have more chance of being carried into practice in the near future than that of a central judicial authority.

(20) Before concluding these introductory remarks the Commission wishes to reiterate its opinion that the proposed measures will fail in an important part of their purpose if they do not help

to smooth out the difficulties arising out of exaggerated claims in regard to the extension of the territorial sea or other claims to jurisdiction over areas of the high seas, and thus safeguard the principle of the freedom of the seas.

I. COMMENTARY TO ARTICLE 58

(1) Paragraph 1 mentions the criteria on which the arbitral commission's decision should be based. In the case of article 55, the criteria are of course those listed in that article. But these criteria do not wholly apply in the other cases. It seems desirable to give the arbitral commission some discretion in regard to the criteria to be applied in these cases. Subject to this remark, the Commission wishes to formulate the following guiding principles:

(i) Common to all the determinations are the requirements:

(a) That scientific findings shall demonstrate the necessity of conservation measures to make possible the optimum sustainable productivity of the stock or stocks of fish;

(b) That the measures do not discriminate against foreign fishermen.

(ii) Common to articles 52, 53, 54 and 55 is the requirement:

That the specific measures shall be based on scientific findings and appropriate for the purpose. In determining appropriateness, the elements of effectiveness and practicability are to be considered as well as the relation between the expected benefits, in terms of maintained and increased productivity, and the cost of application and enforcement of the proposed measures.

(iii) In the case of article 56, the State requesting the fishing State to take necessary measures of conservation would be a non-adjacent and non-fishing State. Such a State would be concerned only with the continued productivity of the resources. Therefore, the matter to be determined would be the adequacy of the overall conservation programme.

(iv) Article 55 contains a criterion which is not included in the other articles: that of the urgency of action. Recourse to unilateral regulation by the coastal State prior to arbitration of the dispute can only be regarded as justified when the delay caused by arbitration would seriously threaten the continued productivity of the resources.

m. COMMENTARY TO ARTICLE 66

(1) International law accords States the right to exercise preventive or protective control for certain purposes over a belt of the high seas contiguous to their territorial sea. It is, of course, understood that this power of control does not change the legal

status of the waters over which it is exercised. These waters are and remain a part of the high seas and are not subject to the sovereignty of the coastal State, which can exercise over them only such rights as are conferred on it by the present rules or are derived from international treaties.

(2) Many States have adopted the principle that in the contiguous zone the coastal State may exercise customs control in order to prevent attempted infringements of its customs and police regulations within its territory or territorial sea, and to punish infringements of those regulations committed within its territory or territorial sea. The Commission considered that it would be impossible to deny to States the exercise of such rights.

(3) Although the number of States which claim rights over the contiguous zone for the purpose of applying sanitary regulations is fairly small, the Commission considers that, in view of the connexion between customs and sanitary regulations, such rights should also be recognized for sanitary regulations.

(4) The Commission did not recognize special security rights in the contiguous zone. It considered that the extreme vagueness of the term "security" would open the way for abuses and that the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safeguard the security of the State. In so far as measures of self-defence against an imminent and direct threat to the security of the State are concerned, the Commission refers to the general principles of international law and the Charter of the United Nations.

(5) Nor was the Commission willing to recognize any exclusive right of the coastal State to engage in fishing in the contiguous zone. The Preparatory Committee of the Hague Codification Conference found, in 1930, that the replies from governments offered no prospect of an agreement to extend the exclusive fishing rights of the coastal State beyond the territorial sea. The Commission considered that in that respect the position has not changed.

(6) The Commission examined the question whether the same attitude should be adopted with regard to proposals to grant the coastal State the right to take whatever measures it considered necessary for the conservation of the living resources of the sea in the contiguous zone. The majority of the Commission were unwilling to accept such a claim. They argued, first, that measures of this kind applying only to the relatively small area of the contiguous zone would be of little practical value and, secondly, that having provided for the regulation of the conservation of living resources in a special part of the present draft, it would

be inadvisable to open the way for a duplication of these rules by different provisions designed to regulate the same matters in the contiguous zone only. Since the contiguous zone is a part of the high seas, the rules concerning conservation of the living resources of the sea apply to it.

(7) The Commission did not maintain its decision of the previous year to grant the coastal State, within the contiguous zone, a right of control in respect of immigration. In its report on the work of its fifth session the Commission commented on this provision as follows:

“It is understood that the term ‘customs regulations’ as used in the article refers not only to regulations concerning import and export duties but also to other regulations concerning the exportation and importation of goods. In addition, the Commission thought it necessary to amplify the formulation previously adopted by referring expressly to immigration, a term which is also intended to include emigration.”

Reconsidering this decision, the majority of the Commission took the view that the interests of the coastal State do not require an extension of the right of control to immigration and emigration. It considered that such control could and should be exercised in the territory of the coastal State and that there was no need to grant it special rights for this purpose in the contiguous zone.

(8) The Commission considered the case of areas of the sea situated off the junction of two or more adjacent States, where the exercise of rights in the contiguous zone by one State would not leave any free access to the ports of another State except through that zone. The Commission, recognizing that in such cases the exercise of rights in the contiguous zone by one State may unjustifiably obstruct traffic to or from a port of another State, considered that in the case referred to it would be necessary for the two States to conclude a prior agreement on the exercise of rights in the contiguous zone. In view of the exceptional nature of the case, however, the Commission did not consider it necessary to include a formal rule to this effect.

(9) The Commission considers that the breadth of the contiguous zone cannot exceed twelve nautical miles from the coast, the figure adopted by the Preparatory Committee of the Hague Codification Conference (1930). Until such time as there is unanimity in regard to the breadth of the territorial sea, the zone should be measured from the coast and not from the outer limit

of the territorial sea. States which have claimed extensive territorial waters have in fact less need of a contiguous zone than those which have been more modest in their delimitation.

(10) The Commission thought it advisable to clarify the expression "from the coast" by stating that the zone is measured from the base-line from which the breadth of the territorial sea is measured.

(11) The exercise by the coastal State of the rights enunciated in this article does not affect the legal status of the air space above the contiguous zone. The question whether the establishment of such an air control zone could be contemplated is outside the scope of these rules of the law of the sea.

n. INTRODUCTORY NOTE TO SECTION III: THE CONTINENTAL SHELF

(1) At its third session, held in 1951, the Commission adopted draft articles on the continental shelf with accompanying comments. After the third session, the special rapporteur re-examined these articles in the light of comments received from the governments of 18 countries. The comments of these governments are reproduced in Annex II to the report on the fifth session.⁷ In March 1953, the special rapporteur submitted a further report on the subject (A/CN.4/60) which was examined by the Commission at its fifth session. The Commission adopted draft articles, which it re-examined at its eighth session, in the context of the other sections of the rules of the law of the sea. This examination did not give rise to any major changes, except with regard to the delimitation of the continental shelf (see article 67).

(2) The Commission accepted the idea that the coastal State may exercise control and jurisdiction over the continental shelf, with the proviso that such control and jurisdiction shall be exercised solely for the purpose of exploiting its resources; and it rejected any claim to sovereignty or jurisdiction over the superjacent waters.

(3) In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, however, such internationalization would meet with insurmountable practical difficulties, and would not ensure the effective exploitation of natural resources necessary to meet the needs of mankind.

(4) The Commission is aware that exploration and exploitation

⁷ *Official records of the General Assembly, Eighth session, Supplement No. 9 (A/2456).*

of the seabed and subsoil, which involves the exercise of control and jurisdiction by the coastal State, may affect the freedom of the seas, particularly in respect of navigation. Nevertheless, this cannot be a sufficient reason for obstructing a development which, in the opinion of the Commission, can be to the benefit of all mankind. The necessary steps must be taken to ensure that this development affects the freedom of the seas no more than is absolutely unavoidable, since that freedom is of paramount importance to the international community. The Commission thought it possible to combine the needs of the exploitation of the seabed and subsoil with the requirement that the sea itself must remain open to all nations for navigation and fishing. With these considerations in mind, the Commission drafted the following articles.

o. COMMENTARY TO ARTICLE 71

(1) While article 69 lays down in general terms the basic principle of the unaltered legal status of the superjacent sea and the air above it, article 71 applies that basic principle to the main manifestations of the freedom of the seas, namely, freedom of navigation and of fishing. Paragraph 1 of this article lays down that the exploration of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. It will be noted, however, that what the article prohibits is not any kind of interference, but only unjustifiable interference. The manner and the significance of that qualification were the subject of prolonged discussion in the Commission. The progressive development of international law, which takes place against the background of established rules, must often result in the modification of those rules by reference to new interests or needs. The extent of that modification must be determined by the relative importance of the needs and interests involved. To lay down, therefore, that the exploration and exploitation of the continental shelf must never result in any interference whatsoever with navigation and fishing might result in many cases in rendering somewhat nominal both the sovereign rights of exploration and exploitation and the very purpose of the articles as adopted. The case is clearly one of assessment of the relative importance of the interests involved. Interference, even if substantial, with navigation and fishing might, in some cases, be justified. On the other hand, interference even on an insignificant scale would be unjustified if unrelated to reasonably conceived requirements of exploration and exploitation of the continental shelf. While, in the first instance, the coastal State must be the judge of the reasonableness—or the justification

—of the measures adopted, in case of dispute the matter must be settled on the basis of article 73, which governs the settlement of all disputes regarding the interpretation or application of the articles.

(2) With regard to the conservation of the living resources of the sea, everything possible should be done to prevent damage by exploitation of the subsoil, seismic exploration in connexion with oil prospecting, and leaks from pipelines.

(3) Paragraphs 2 to 5 relate to the installations necessary for the exploration and exploitation of the continental shelf, as well as to safety zones around such installations and the measures necessary to protect them. These provisions, too, are subject to the overriding prohibition of unjustified interference. Although the Commission did not consider it essential to specify the size of the safety zones, it believes that generally speaking a maximum radius of 500 metres is sufficient for the purpose.

(4) Interested parties, i.e. not only government but also groups interested in navigation and fishing, should be duly notified of the construction of installations, so that these may be marked on charts. In any case, the installations should be equipped with warning devices (lights, audible signals, radar, buoys, etc.).

(5) There is, in principle, no duty to disclose in advance plans relating to contemplated construction of installations. However, in cases where the actual construction of provisional installations is likely to interfere with navigation, due means of warning must be maintained, in the same way as in the case of installations already completed, and as far as possible due notice must be given. If installations are abandoned or disused they must be entirely removed.

(6) With regard to the general status of installations, it has been thought useful to lay down expressly in paragraph 3 of this article, that they do not possess the status of islands and that the coastal State is not entitled to claim for installations any territorial waters of their own or to treat them as relevant for the delimitation of territorial waters. In particular, they cannot be taken into consideration for the purpose of determining the baseline. On the other hand, the installations are under the jurisdiction of the coastal State for the purpose of maintaining order and of the civil and criminal competence of its courts.

(7) While, generally, the Commission, by formulating the test of unjustifiable interference, thought it advisable to eliminate any semblance of rigidity in adapting the existing principle of the freedom of the sea to what is essentially a novel situation, it

thought it desirable to rule out expressly any right of interference with navigation in certain areas of the sea. These areas are defined in paragraph 5 of this article as narrow channels or recognized sea lanes essential to international navigation. They are understood to include straits in the ordinary sense of the word. The importance of these areas for the purpose of international navigation is such as to preclude, in conformity with the tests of equivalence and relative importance of the interests involved, the construction of installations or the maintenance of safety zones therein, even if such installations or zones are necessary for the exploration or exploitation of the continental shelf.

p. COMMENTARY TO ARTICLE 73

(1) The text of the draft as adopted at the fifth session contained a general arbitration clause providing that any disputes which might arise between States concerning the interpretation or application of the articles should be submitted to arbitration at the request of any of the parties.

(2) At its eighth session the Commission amended this article to provide that disputes should be settled by the parties by a method agreed between them. Failing such agreement, each of the parties would have the right to submit the dispute to the International Court of Justice.

(3) The majority of the Commission considered that a clause providing for compulsory arbitration would not be of much practical value unless the Commission at the same time laid down the procedure to be followed, as in the case of disputes relating to conservation of the living resources of the sea. It was pointed out, however, that in the present context the disputes would not be of an extremely technical character as in the case of the conservation of the living resources of the sea. It was therefore considered that arbitration could be replaced by reference to the International Court of Justice.

(4) The Commission did not agree with certain members who were opposed to the insertion in the draft of a clause on compulsory arbitration or jurisdiction, on the ground that there was no reason to impose on States one only of the various means provided by existing international law, and particularly by article 33 of the United Nations Charter, for the pacific settlement of international disputes. These members also pointed out that the insertion of such a clause would make the draft unacceptable to a great many States. The majority of the Commission nevertheless considered such a clause to be necessary. The articles on the

continental shelf are the result of an attempt to reconcile the recognized principles of international law applicable to the régime of the high seas, with recognition of the rights of the coastal State over the continental shelf. Relying, as it must, on the continual necessity to assess the importance of the interests at stake on either side, this compromise solution must allow for some power of discretion. Thus, it will often be necessary to rely on a subjective assessment—with the resultant possibilities of disagreement—to determine whether, in the terms of article 45 paragraph 1, the measures taken by the coastal State to explore and exploit the continental shelf result in “unjustifiable” interference with navigation or fishing; whether, as is laid down in paragraph 2 of that article, the safety zones established by the coastal State do not exceed a “reasonable” distance around the installation; whether, in the terms of paragraph 5 of the article, a sea lane is “recognized” and whether it is “essential to international navigation”; finally, whether the coastal State, when preventing the laying of submarine cables or pipelines, is really acting in the spirit of article 44, which only authorises such action when it comes within the scope of “reasonable” measures for the exploration and exploitation of the continental shelf. If it is not kept within the limits of respect for law and is not impartially complied with, the new regime of the continental shelf may endanger the higher principle of the freedom of the seas. Consequently, it seems essential that States which disagree concerning the exploration and exploitation of the continental shelf should be required to submit any dispute arising on this subject to an impartial authority. For this reason the majority of the Commission thought it necessary to include the clause in question. It is incumbent on the parties to decide the manner in which they wish to settle their differences; if the parties are unable to reach agreement on the manner of settlement, however, either party may refer the matter to the International Court of Justice.

B. Report of the International Technical Conference on the Conservation of the Living Resources of the Sea—Rome (1955)

1. NOTE. The International Technical Conference held in Rome in April-May, 1955 was called by the Secretary-General of the United Nations at the request of the General Assembly. The Report was referred to the International Law Commission of the United Nations in order that it might be taken into account during the Commission's work on the law of the sea. United Nations General Assembly Resolution 900 (IX) requesting that this

Technical Conference be held is reproduced in the text of the Report of the Conference, A/Conf. 10/6, reprinted below. Technical papers presented at the Conference, containing valuable information with charts and maps, may be found in A/Conf. 10/7, January, 1956. This latter document has not been reproduced herein.

2. Report of the International Technical Conference on the Conservation of the Living Resources of the Sea

18 April to 10 May 1955, Rome
(A/Conf. 10/6, July, 1955)

I. INTRODUCTION

1. The General Assembly on 14 December 1954 adopted resolution 900 (IX), which reads as follows:

The General Assembly,

Considering that the International Law Commission has proposed for the consideration of the General Assembly draft articles¹ covering certain basic aspects of the international regulation of fisheries, and considering also that that Commission has not yet concluded its study of related questions,

Having regard to the fact that the problem of the international conservation of fisheries involves matters of a technical character which require consideration on a wide international basis by qualified experts,

Being of the opinion that an international technical conference should be held in the near future to consider the problems of fishery conservation and make recommendations thereon,

Recalling that, by resolution 798 (VIII) of 7 December 1953, the General Assembly, having regard to the fact that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf and the superjacent waters are closely linked together juridically as well as physically, decided, consequently, not to deal with any aspect of those topics until all the problems involved had been studied by the International Law Commission and reported upon by it to the General Assembly,

Having regard to the fact that the technical studies relating to the conservation, protection and regulation of fisheries and other resources of the sea are also closely linked to the solution of the problems mentioned in the preceding paragraph,

¹ See Official Records of the General Assembly, Eighth Session, Supplement No. 9, document A/2456, paragraph 94.

1. Requests that Secretary-General to convene an international technical conference at the headquarters of the Food and Agriculture Organization of the United Nations on 18 April 1955 to study the problem of the international conservation of the living resources of the sea and to make appropriate scientific and technical recommendations which shall take into account the principles of the present resolution and shall not prejudice the related problems awaiting consideration by the General Assembly;

2. Invites all States Members of the United Nations and States members of the specialized agencies to participate in the Conference and to include among their representatives individual experts competent in the field of fishery conservation and regulation;

3. Invites the interested specialized agencies and inter-governmental organizations concerned with problems of the international conservation of the living resources of the sea, to send observers to the Conference;

4. Requests the Secretary-General to arrange for the necessary staff and facilities which would be required for the Conference, it being understood that the technical services of Governments of Member States and the technical and secretarial services of the Food and Agriculture Organization shall be utilized as fully as practicable in the arrangements for such a conference;

5. Requests the Secretary-General to circulate the report of the Conference for information to the Governments of all States invited to participate in the Conference;

6. Decides to refer the report of the said scientific and technical Conference to the International Law Commission as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report which it is to prepare pursuant to resolution 899 (IX) of 14 December 1954.

2. In pursuance of the above resolution, the International Technical Conference on the Conservation of the Living Resources of the Sea convened at the headquarters of the Food and Agriculture Organization of the United Nations on 18 April 1955. It held twenty-four plenary meetings and concluded its work on 10 May 1955.

3. The Governments of the following forty-five States sent representatives:

Argentina	Greece	Panama
Australia	Guatemala	Paraguay
Belgium	Honduras	Peru
Brazil	Iceland	Poland
Canada	India	Portugal
Chile	Indonesia	Spain
China	Israel	Sweden
Colombia	Italy	Turkey
Costa Rica	Japan	Union of South Africa
Cuba	Korea,	Union of Soviet Social-
Denmark	Republic of	ist Republics
Ecuador	Mexico	United Kingdom
Egypt	Monaco	United States of
El Salvador	Netherlands	America
France	Nicaragua	Uruguay
Germany	Norway	Yugoslavia
Federal Republic of		

4. The Governments of the following six States sent observers : Bolivia, Ceylon, Dominican Republic, Romania, Thailand and Venezuela.

5. The Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization were represented by observers.

6. The following inter-governmental fishery organizations were represented by observers :

General Fisheries Council for the Mediterranean

Indo-Pacific Fisheries Council

Inter-American Tropical Tuna Commission

International Commission for the Northwest Atlantic Fisheries

International Council for the Exploration of the Sea

International North Pacific Fisheries Commission

International Pacific Halibut Commission

International Pacific Salmon Fisheries Commission

International Whaling Commission

Permanent Commission for the Exploitation and Conservation of the Maritime Resources of the South Pacific

Permanent Commission under the 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish

[Paragraphs 7-14 omitted.]

* * *

15. The result of the deliberations of the Conference is summarized in the following sections of the report. Reservations of the delegations of Chile and Peru to sections VI and VII of the report and reservation of the delegation of Ecuador to all sections of the report appear in annex A.

II. OBJECTIVES OF FISHERY CONSERVATION

16. Conservation is essential in the development of a rational exploitation of the living resources of the seas. Consequently, conservation measures should be applied when scientific evidence shows that fishing activity adversely affects the magnitude and composition of the resources or that such effects are likely.

17. The immediate aim of conservation of living marine resources is to conduct fishing activities so as to increase, or at least to maintain, the average sustainable yield of products in desirable form. At the same time, wherever possible, scientifically sound positive measures should be taken to improve the resources.

18. The principal objective of conservation of the living resources of the seas is to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products. When formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast.²

III. TYPES OF SCIENTIFIC INFORMATION REQUIRED FOR A FISHERY CONSERVATION PROGRAMME

19. Effective conservation of any resource of the sea requires scientific information, based on statistical records of the amount and kind of fishing and of resulting catches, and on integrated research on the biology and conditions of existence of the resource. It is therefore essential that any nation engaging in sea fishing collect adequate statistical records of fishing effort and catch; it should also conduct pertinent biological and other investigations, to serve as a basis for ensuring the conservation of the resource being exploited. Since both the determination of the need for conservation measures and the selection of adequate and effective measures often depend on having data over a long period of time, it is most desirable that adequate records be collected, and biological and other research be conducted, from the beginning of the development of a fishery.

² At its 19th plenary meeting on 5 May, the Conference decided, by a vote of 18 against 17, with 8 abstentions, to include this sentence in its report: see A/CONF.10/SR19.

20. Scientific information is required in order to provide answers, for a given fishery resource, to the following problems:

(a) Whether regulation of the amount, manner or kind of fishing may be expected to produce desirable changes in the amount of the catch or its quality (It is important to determine whether the amount, manner and kind of fishing are such that regulation would maintain or improve the quantity or quality of the sustainable catch, because only in this case is the application of regulatory measures indicated. In order to make such a determination it is often necessary to consider also the fluctuations in the fish population resulting from the effects of environmental factors unconnected with amount, manner or kind of fishing);

(b) If conservation measures are indicated, the particular measures to be adopted to produce the effects desired;

(c) The measures, other than control of amount, manner or kind of fishing, to be undertaken to improve the quantity or quality of the catch.

21. The scientific information required will include some or all of the following types:

(a) Extent of separation of the fishery resource into independent or semi-independent populations, which constitute the natural biological units of the resource to be dealt with by a conservation programme;

(b) Magnitude and geographic ranges of the populations constituting the resource, as a basis for effective investigation and regulation, since these need to be applied over whatever sea areas are occupied by the populations to be conserved;

(c) Pertinent facts respecting the life history (such as growth, mortality rates, migration, recruitment, etc.), ecology, behaviour and population dynamics of the species constituting the resource, including fluctuations in abundance and variations in distribution and behaviour which are due to changes in the biotic and abiotic factors of the environment, and which are independent of the amount of fishing, and including the inter-relationships of the community of organisms of which the exploited species forms a part;

(d) Effects of the amount, manner and kind of fishing on the resource and on the quantity and quality of the sustainable average catch to be obtained from it;

(e) Relationships of the resource to other species which are members of the same ecological community and are being exploited simultaneously by the same fishing equipment.

22. The degree of elaboration of the scientific investigations required to solve the conservation problems presented by particular

resources, or in particular areas of the sea, is extremely variable. In some cases quite simple investigations will be adequate to determine the need for application of conservation measures, and to indicate appropriate measures to be applied. In other cases very detailed and extensive investigations will be necessary. The requirements of each case must be determined on scientific evidence.

IV. TYPES OF CONSERVATION MEASURES APPLICABLE IN A CONSERVATION PROGRAMME

23. Several general types of measures may be applied in a conservation programme, under each of which there are several specific types of measures which may be used, depending on the nature of the resource and the way in which it is harvested:

(a) Regulation of the amount of fishing to maintain or to increase the average sustainable catch, by

(i) Directly limiting the amount of the total catch by fixing a maximum annual catch;

(ii) Indirectly limiting the amount of the catch by closed seasons and closed areas, or by the limitation of fishing gear and ancillary equipment;

(b) Protection of sizes of fish, the conservation of which will result in a greater average catch or a more desirable quality, by

(i) Regulation of fishing gear to achieve differential capture of specified sizes;

(ii) Prohibition of landing of fish below a specified size, and requiring their return to the sea alive, if this is technically practicable;

(iii) Prohibition of fishing in areas where, or seasons when, small fish predominate;

(c) Regulations designed to assure adequate recruitment:

(i) Control of the amount of fishing by any of the means indicated under (a) above to ensure adequate spawning stock;

(ii) Differential harvesting of different sizes of fish, by any of the means indicated under (b) above to lower the fishing rate on immature fish;

(iii) Prohibition of fishing in spawning areas or during spawning seasons;

(iv) Preservation and improvement of spawning grounds;

(v) Differential harvesting of sexes to achieve a desirable sex ratio in the population (This type of measure is not generally applicable, but has been applied to some crustacea, mammals and fishes);

(d) Measures for improvement and increase of marine resources:

- (i) Artificial propagation ;
- (ii) Transplantation of organisms from one biogeographical area to another, with due precaution against adverse effects ;
- (iii) Transplantation of young to better environmental conditions.

24. The determination of which of these measures should be applied in a given conservation programme will depend on the details of the life history, ecology, population dynamics and behaviour of the species constituting the resource and on the technical nature of the fishing. The efficient application of conservation measures requires adequate prior scientific investigation of these matters. Recommendations for regulations should be made only on the basis of such investigations.

V. PRINCIPAL SPECIFIC INTERNATIONAL FISHERY CONSERVATION PROBLEMS OF THE WORLD FOR THE RESOLUTION OF WHICH INTERNATIONAL MEASURES AND PROCEDURES HAVE BEEN INSTITUTED

25. In various regions of the world, agreed international measures and procedures have been instituted for the resolution of specific international fishery conservation problems. This section of the report reviews the existing international conservation organizations in the North Atlantic, South Atlantic, Mediterranean, Indo-Pacific, North Pacific and South Pacific regions and in the Antarctic Ocean and other whaling areas. It also states the principles which have been developed in the formation of these various organizations.

Review of Existing International Conservation Organizations

26. International arrangements for the conservation of particular resources, or for the conservation of resources in a particular area, have been made in many parts of the world. While some of these arrangements provide only for required research, others provide also for the recommendation and/or application of conservation measures. There is a total of eleven such councils and conventions involving forty-two different States. Some of the States are members of more than one council or convention so that membership of the eleven organizations totals seventy-eight.³

³ See A/CONF. 10/L 4 Rev. 1, included in the supplement to this report. [Omitted.]

North Atlantic

27. The International Council for the Exploration of the Sea, established in 1902, provides for the coordination of the scientific research of most countries in northern and western Europe on the fish stocks of the North Sea and the Baltic and those in the North-East Atlantic and the Greenland waters. Membership is open to all nations having an interest in the area.

28. The 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish is an arrangement among thirteen nations of Europe for the application of specific conservation measures. These measures are based on the scientific advice of the International Council for the Exploration of the Sea, which is given through a liaison committee appointed by the Council.

29. Canada, Newfoundland, the United States and France organized the North American Council on Fishery Investigations, which was active from 1920 to 1938, to co-ordinate their scientific research in the North-West Atlantic, operating on the pattern of the International Council for the Exploration of the Sea. This North American Council provided a background for the subsequent establishment of the International Convention for the North-West Atlantic Fisheries.

30. The International Convention for the North-West Atlantic Fisheries, which came into force in 1950, relates to the sea fisheries of the North-West Atlantic Ocean, and is open to all nations who participate in the fisheries of this region and to the adjacent coastal States. Since some nations are not concerned with problems in the entire region, it is divided into sub-areas, within which the investigation and conservation of the fish resources are the concern of panels consisting of representatives of interested States, that is, States fishing in the sub-area and States adjacent to it. The Commission established under the Convention develops the necessary programmes and co-ordinates the research which is done by member Governments. Recommendations for regulations are made by the Commission on the basis of proposals from the appropriate panels, and become effective for a given sub-area when accepted by the government members of the panel for such sub-areas.

South Atlantic

31. There are no international arrangements in this area, except for whaling, discussed separately below.

Mediterranean

32. The International Commission for the Scientific Exploration of the Mediterranean was organized in 1919. Its function is to co-ordinate the scientific research in this sea, both oceanographical and biological, but without particular reference to fisheries.

33. The General Fisheries Council for the Mediterranean, organized in 1952, and sponsored by the Food and Agriculture Organization of the United Nations (FAO), is an association of Mediterranean States for the purpose of co-ordinating research and development activities related to the fisheries of this sea. It has at present eleven members. There is a liaison committee between this Council and the International Commission founded in 1919.

Indo-Pacific

34. The Indo-Pacific Fisheries Council is another FAO-sponsored Council, for the co-ordination of research, conservation and development of the fisheries (both inland and marine) of this region. It was founded in 1949 and is open to all nations of the region; it has at present sixteen members.

North Pacific

35. The Fur Seal Treaty of 1911 between Japan, Russia, Canada and the United States is the earliest example of a convention for the conservation of a single resource. This Convention, which has resulted in the rebuilding and management of the fur seal herds of the North Pacific, provided particularly for the cessation of pelagic sealing. Although the treaty was terminated in 1941, following the withdrawal of Japan, the United States and Canada have continued the management of the herds in the eastern North Pacific, and the Soviet Union has continued to manage those to the west. Negotiation of a new convention is expected in the near future.

36. The International Pacific Halibut Convention, negotiated between the United States and Canada in 1923, established a Commission which, with its own research staff, undertook the necessary investigations of their halibut fisheries in the North-West Pacific. In 1930 the Commission was given authority to regulate the fishing on the basis of its scientific findings, as well as to continue the research necessary for a continuing conservation programme, to make possible the attainment of the maximum sustainable catch.

37. The International Sockeye Salmon Convention of 1937,

between the United States and Canada, provided for a Commission which, with its own research staff, should investigate the sockeye salmon spawning in the Fraser River watershed. After some years of investigation the Commission recommended the construction of certain fishways, and after eight years of such investigations had authority to regulate and to take action to conserve and rebuild those salmon populations. It is now in its eighteenth year of operation and currently conducts both research and management of the fishery.

38. The International North Pacific Fisheries Convention was recently negotiated between Japan, Canada, and the United States and entered into force in 1953. It is concerned with stocks of fish in the convention area under substantial exploitation by two or more contracting parties. It does not include salmon stocks of the North-West Pacific since neither Canada nor the United States fish such stocks. Research is conducted by the national research agencies, which are co-ordinated by the Commission established by the Convention, but the Commission may employ its own scientific staff if necessary. Decisions and recommendations for regulations are confined to the contracting countries engaged in the exploitation of a given stock on a substantial scale. Under this Convention, States which have not engaged in substantial exploitation of certain stocks of fish agree to abstain from fishing those stocks where it can be shown that all the following conditions are satisfied: (a) more intensive exploitation will not provide a substantial increase in yield, (b) the stock is under conservation regulation and (c) is subject to extensive scientific study designed to discover whether the stock is being fully utilized, and what conditions are necessary for maintaining its maximum sustained productivity.

39. The Inter-American Tropical Tuna Convention, operating in the tropical and sub-tropical eastern Pacific, was negotiated in 1949 between Costa Rica and the United States to obtain scientific information respecting the tunas and tuna bait-fishes in the tropical and sub-tropical eastern Pacific, required as a basis for maintaining the populations of those fishes at levels which will permit maximum sustainable catches. The treaty is open to adherence by all nations having an interest in the fishery. Panama adhered in 1953. The Commission established by this Convention conducts scientific investigations with its own staff, and makes conservation recommendations based on the research results.

South Pacific

40. The Permanent Commission for the Exploitation and Con-

servation of the Maritime Resources of the South Pacific, which was inaugurated in 1954 between Peru, Ecuador and Chile, has broad terms of reference. It proposes to: (a) unify fishing and whaling regulations of the three countries, (b) promote scientific investigations, (c) compile statistics and exchange information with other agencies and (d) co-ordinate the work of the three countries in all matters pertaining to the conservation of the living resources of the sea.

Antarctic and other whaling areas

41. The International Convention of 1946 for the Regulation of Whaling, to which seventeen nations now adhere, established in 1949 a Commission which co-ordinates and reviews research of member Governments, reviews and evaluates scientific findings, and makes conservation regulations on the basis of those findings. It is concerned with the conservation of whales in all areas where whaling is conducted.

42. The Permanent Commission for the Exploitation and Conservation of the Maritime Resources of the South Pacific, mentioned above, regulates whaling and the conservation of whales in the South-East Pacific.

Principles of International Conservation Organizations

43. The older research and management conventions operating with permanent commissions have been highly successful in restoring and maintaining the productivity of international resources. In general, the newer conventions are making encouraging progress in this direction. Experience in the international conservation of living marine resources reflected in the foregoing organizations has led increasingly to the incorporation in conservation conventions of certain basic provisions in the application of conservation programmes. The more important of such provisions are:

(a) A sufficiently large geographical area within which research and regulation are to be carried out to encompass the entire range of the populations constituting the resource or resources with which the convention is concerned;

(b) All interested nations, both the fishing nations and the adjacent coastal States, are included in the international organizations responsible for conservation of a given resource, or in a given region;

(c) Adequate scientific research, carefully evaluated as outlined in sections III and IV of this report, for determining the

need for conservation measures, and the formulation of the particular measures to be applied;

(d) Continuing research and review;

(e) Where international organizations are granted regulatory powers, these powers are sufficiently broad to ensure the full application of all suitable conservation measures which have been arrived at on the basis of adequate scientific investigations;

(f) Facilities for adjusting and revising the convention to meet changing conditions in the fishery and to take advantage of advancing technical and scientific knowledge;

(g) Clear rules conveying the rights and duties of the member States, the conservation measures to be recommended, the functions of the commissions set up under the convention, and the authority, of these commissions to regulate or recommend regulations, and how these recommendations shall be handled;

(h) Facilities to obtain advice from the interested public, through advisory committees or otherwise, regarding the applicability and practicability of management programmes, and measures and facilities to inform the public concerning the work of the commission, its objectives and accomplishments.

VI. APPLICABILITY OF EXISTING TYPES OF INTERNATIONAL CONSERVATION MEASURES AND PROCEDURES TO OTHER INTERNATIONAL FISHERY CONSERVATION PROBLEMS

Problems of the Coastal State—Extent of Interest and Responsibility

44. Two trends of thought became apparent during the Conference, as to the place of coastal States in the matter of conservation. All agreed that conservation measures adequate both from the technical and scientific points of view should, where needed, be introduced in the areas in question in order to prevent all those in the various countries who are concerned with the fisheries from causing a decrease in the sustainable yield of the resources.

45. According to one group, however, the coastal State has a special interest in the measures of conservation to be applied. Within this group, the points of view expressed concerning the rights and duties of the coastal State covered a wide range. These varied from the proposal which was accepted by the Conference and appears in section II, paragraph 3, of this report, that the coastal State be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its

coasts, to the proposal that the coastal State alone should be entrusted with control and conservation measures in areas near its coast, with no necessary limitation except that the measures should be in accord with the general principles of a technical character adopted at the Conference, and should be based on the maintenance of the existing ecological system in a given maritime zone. The view was also expressed that, in considering the application of conservation measures, the people nearest to, and dependent on, the resources for food should be given first consideration. These views result from the argument that the coastal State has a special interest and responsibility for the conservation of the biological wealth near its shores and that it is in consequence the best qualified to be entrusted with the task of conservation.

46. It was also emphasized in the discussions in this connexion that the special interests of the coastal State should be regarded as related to the resources or stocks which the States concerned aim to conserve through efforts which they make, or through the various measures which they may take, as for example the development of fisheries by artificial means, such as acclimatization, the improvement of the natural environment of the fishery, etc.

47. According to the other group, the coastal State should refrain from adopting any conservation measures for high seas fisheries applicable to the nationals of other countries, without the agreement of the other States concerned. This view proceeds from the consideration that conservation measures should be based on scientific and technical evidence, that the coastal State is not necessarily better qualified than other States concerned to assess scientific truth, and that all States concerned should be entitled to supply pertinent scientific evidence and to have it considered on an equal footing, with a view to formulating adequate conservation measures.

48. In the plenary meeting of 7 May a proposal concerning the situation of the coastal State was presented by the delegations of Cuba and Mexico.⁴ The Conference on this occasion declared itself (by a vote of 21 to 20 with 3 abstentions) not competent to deal with this proposal. The vote was taken on the motion by the delegation of Norway that the Cuban-Mexican proposal was outside the scope of the Conference.⁵

49. *Existing procedures.* Many of the present fishery conservation conventions may be adhered to by any interested State. This

⁴ See A/CONF.10/L.40, formerly A/CONF.10/GC.1/Rev.1.

⁵ The discussion is recorded in A/CONF.10/SR.21.

provides an opportunity for the coastal State to participate in the work and decisions of the commission operating under the convention. The International Conference for the Northwest Atlantic Fisheries, particularly, provides that each contracting party with coastline adjacent to a sub-area may be represented on the panel for that sub-area, whether or not it fishes in that sub-area.

Problems Relating to the Operation of Conventions, Including Procedures of Operation

50. Failure of all States concerned to participate in the preparation, negotiation and establishment of international fishery conservation conventions impedes or limits progress in achieving the objectives of conservation. Furthermore, commissions functioning under such conventions are handicapped in their operation when all States concerned do not participate in the scientific research and investigation undertaken with a view to achieving the objectives of the convention.

51. The commissions are also handicapped if the conventions do not clearly and fully define the rights and duties of the member countries and do not contain precise stipulations both as to the procedures and the conservation measures to be recommended and applied. This includes definition of the duties and authority of the commissions with respect to the kinds and application of conservation measures, or with respect to the recommendation of such measures. It was also considered that the commissions cannot be most effective and expeditious in progressing towards their objectives unless they are given considerable latitude as to the specific conservation measures which they may apply or recommend for application. Too severe a limitation of their authority can result in a reduction in their effectiveness and delay in achieving results.

52. *Existing procedures.* Some present conventions are so framed that new measures can be adopted at any time when necessary for achieving the desired objectives.

53. Some are open-ended so that any concerned State may adhere; other conventions include all of the countries engaged in the exploitation of the fish stock or stocks covered by the conventions. These conventions, in addition, generally specify clearly the competence of the commissions for which they provide, and include rules for their operation. The majority of the conventions give their commissions considerable latitude with respect to determination of the specific conservation measures which they may use.

Biological or Geographic Coverage of Conventions

54. Lack of co-operation by any State participating in fishing on the stocks of fish or in the areas covered by the conventions may result in the conventions becoming ineffective. Scientific evidence clearly demonstrates that effective conservation management of a stock of fish cannot be achieved unless all States engaged in substantial exploitation of that stock come within the management system.

55. *Existing procedures.* Present conventions generally cover:

(a) One or more stocks of marine species, which can be separately identified and suitably regulated; or

(b) A specified area, in cases where the identification of stocks mentioned in the preceding paragraph is impossible in practice, because of the interdependence of several species or for any other reason.

Problems Involved in Reaching Agreement on Conservation Measures and Procedures

56. Failure to reach agreement on the conclusion to be drawn from a given set of data has sometimes resulted in conservation programmes being inadequate or ineffective.

57. In most instances, disputes can, of course, be settled by the bodies set up by the convention to co-ordinate and direct the conservation measures to be adopted. The utility of such bodies is beyond question, but their role is necessarily limited to the purposes for which they were set up. There may be occasional disagreements in such bodies which prevent or impede the development and implementation of an effective conservation system. Such disagreements might be roughly grouped into three general categories: (a) concerning questions of a legal or juridical nature; (b) concerning questions of a scientific and technical character; (c) concerning other questions.

58. *Existing procedures.* Problems covered in category (a) can be handled in the first instance through diplomatic channels and then if necessary by recourse to existing international juridical procedures.

59. One method of handling a problem in category (b) was included in the North Pacific Fisheries Convention. This Convention provides that in the event the Commission operating under the Convention fails, in a reasonable period of time, to reach agreement on the conclusions from certain research work, bearing upon a problem of special importance, the question shall be referred to a committee of competent and neutral (impartial)

scientists selected by the contracting parties. The majority decision of the committee determines the recommendations to be made by the Commission.

Problems Created by New Entrants into a Fishery Under Conservation Management

60. An established conservation programme can be made ineffective by the participation of nationals of a State newly entering into the exploitation of the stock of fish, with no commitment to observe the regulations. Three aspects of this problem are considered.

Case 1

61. A special case exists where countries, through research, regulation of their own fishermen and other activities, have restored or developed or maintained stocks of fish so that their productivity is being maintained and utilized at levels reasonably approximating their maximum sustainable productivity, and where the continuance of this level of productivity depends upon such sustained research and regulation. Under these conditions, the participation of additional States in the exploitation of the resource will yield no increase in food to mankind, but will threaten the success of the conservation programme. Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favorable for such action.

62. *Existing procedures.* The International North Pacific Fishery Commission provides a method for handling the special case mentioned above. It was recognized that new entrants in such fisheries threatened the continued success of the conservation programme. Under these circumstances the State or States not participating in fishing the stocks in question agreed to abstain from such fishing when the Commission determines that the stock reasonably satisfies all the following conditions:

(a) Evidence based upon scientific research indicates that more extensive exploitation of the stock will not provide a substantial increase in yield;

(b) The exploitation of the stock is limited or otherwise regulated for conservation purposes by each party substantially engaging in its exploitation; and

(c) The stock is the subject of extensive scientific study

designed to discover whether it is being fully utilized, and what conditions are necessary for maintaining its maximum sustained productivity. The Convention provides that, when these conditions are satisfied, the States which have not engaged in substantial exploitation of the stock will be recommended to abstain from fishing such stock, while the States engaged in substantial exploitation will continue to carry out the necessary conservation measures. Meanwhile, the abstaining States may participate in fishing other stocks of fish in the same area.

Case 2

63. A somewhat different case was discussed, involving new entrants into a fishery which a coastal State is regulating for conservation purposes, and when existing scientific evidence indicates the necessity of continuing such regulations for conservation purposes.

64. *Existing procedures.* In general this conservation problem can be handled if the new entrant should declare itself ready to observe the conservation regulations in force and undertake to co-operate with the other States concerned in carrying out the relevant programme of research and management.

Case 3

65. A variation of this problem exists where the intensive exploitation of offshore waters adjoining heavily fished inshore waters, by a new fishing operation initiated either by the coastal States or by another State, considerably affects the abundance of fish in the inshore waters.

66. *Existing procedures.* The conservation aspect of the problem is taken care of if the entire area in which the stocks are fished, including both the inshore and offshore portions, is included within a single conservation system and is subjected to conservation regulations adequate to maintain the maximum sustainable yield.

Problems of Effective Enforcement

67. Some conventions provide that joint regulations shall be enforced on fishermen only by officials of their own government.

68. Other conventions have special provisions for the enforcement of regulations. The North Pacific Halibut Convention, the Pacific Sockeye Salmon Convention and the North Pacific Fishery Convention provide that authorized officers of any Contracting Party may enforce on the high seas the regulations promulgated

by the Commission, with respect to the nationals of any Contracting Party, such nationals being then dealt with in their own country.

Areas and Species Not Covered by Present Conservation Conventions

69. Apart from those fisheries discussed in Section V, sea fisheries are at present not subject to international measures of conservation. Examples of such fisheries range from newly discovered resources in the initial phase of exploitation to continually worked fisheries which have begun to show signs of depletion. According to the nature of the problems associated with them, these fisheries could be grouped in four categories. Examples are here suggested which would probably fall within each category:

(a) Fisheries which have been newly or partially developed and which are capable of substantial expansion, for example, Mid-Pacific tunas;

(b) Old established fisheries which are apparently being fully exploited, but in the case of which scientific information is inadequate to suggest the need for conservation measures, for example, *Rastrelliger* (Indo-Pacific mackerel);

(c) Fisheries in separated or contiguous areas depending upon the same species, where further expansion of a particular fishery may result in depletion of others, for example, Sciaenid and Polynemid fisheries of the Arabian sea; Hilsa fisheries of the Bay of Bengal;

(d) Fisheries which are already showing signs of overfishing, requiring conservation measures at national and international levels, for example, in particular, North-West Pacific sockeye salmon.

70. The Inter-American Tropical Tuna Commission, already referred to, is an instance where an international conservation policy has already been formulated for the exploitation of a fishery of comparatively recent origin. Such early action has, however, been exceptional. In many cases several fisheries have been exploited for centuries, but the absence or inadequacy of statistics and other scientific data makes it difficult to suggest conservation measures (e.g., several Indo-Pacific fisheries). In such cases, especially in countries where the fishing industry is not sufficiently advanced, it would be very useful if the scientific facts listed in section III could be gathered on a continuing basis both at national levels and when necessary by co-operative research projects at international levels.

71. Fisheries under category (c) of paragraph 69 present special problems of conservation. In areas where two or more nations are engaged in fishing on what is basically the same resource, but by different methods, in different areas, in different environments, or on different age groups of the same species, management programmes can be worked out by agreement between the nations concerned. Where inshore fishing has been traditional, new problems are introduced by intensive offshore fishing either by new enterprises in the same country or by other countries having superior experience and equipment.

72. Category (d) of paragraph 69 includes fisheries of certain areas where intensive fishing has been taking place for many years. Conservation measures have been enforced by certain countries bordering these areas but there is no agreed policy of conservation or uniform method of enforcement by all the countries concerned, to keep the yield from these waters at the highest sustainable level. Closed seas and small gulfs, as well as other areas, may present conservation problems of vital interest to the countries in the immediate neighborhood.

73. Many areas of the oceans, although exploited by several countries, are still without any agencies for the study of conservation problems and the development of conservation measures by agreement. The material presented at the Conference does not appear adequate to make a full appraisal of these, but some of the areas requiring attention, and the fisheries concerned, are summarized in the following list:

AREA	SPECIES ⁶
North-West Pacific.....	<div> <div>{</div> <div> Fur seal (<i>Callorhinus ursinus</i>) Pacific salmon (<i>Genus Oncorhynchus</i>) Herring (<i>Clupea pallasii</i>) Sardine (<i>Sardinops melanosticta</i>) Flat fishes (<i>Several genera and many species</i>) </div> </div>
South-East Pacific.....	Anchovies (<i>Engraulis ringens</i>)
Mediterranean	Trawl fisheries
North-East Atlantic.....	Herring (<i>Clupea harengus</i>)
Baltic	<div> <div>{</div> <div> Plaice (<i>Platichthys platessa</i>) Flounder (<i>Pleuronectes flesus</i>) Salmon (<i>Salmo solar</i>) Cod (<i>Gadus callarias</i>) </div> </div>
Arctic seas	Seals and other aquatic mammals (<i>Phoca groenlandica</i> , <i>Cystophora cristata</i> , <i>Erignathus barbatus</i> , <i>Odobenus tosmarus</i> and others)
Various seas	Shrimp resources developed in recent years.

⁶ This list covers only species mentioned in the Conference and is not to be considered as complete.

VII. GENERAL CONCLUSIONS

74. The Conference notes with satisfaction conservation measures already carried out in certain regions and for certain species at the national and international level. International co-operation in research (including statistical investigation) and regulation in the conservation of living resources of the high seas is essential. The Conference considers that wherever necessary further conventions for these purposes should be negotiated.

75. The present system of international fishery regulation (conservation measures) is generally based on the geographical and biological distribution of the marine populations with which individual agreements are concerned. From the scientific and technical point of view this seems, in general, to be the best way to handle these problems. This system is based upon conventions signed by the nations concerned.

76. From the desire expressed during this Conference by all participating nations to co-operate in research, and from the guidance given by existing conventions, it appears that there are good prospects of establishing further conservation measures where and when necessary. Having regard to these considerations and the existing principles dealt with under Section V, "Principles of International Conservation Organizations," the Conference considers that the following should be taken as the guiding principles in formulating conventions:

(a) A convention should cover either:

- (i) One or more stocks of marine animals capable of separate identification and regulation; or
- (ii) A defined area, taking into account scientific and technical factors, where, because of intermingling of stocks or for other reasons, research on and regulation of specific stocks as defined in (i) is impracticable;

(b) All States fishing the resource, and adjacent coastal States, should have opportunity of joining the convention and of participating in the consideration and discussion of regulatory measures;

(c) Conservation regulations introduced under a convention should be based on scientific research and investigation;

(d) All signatory States should so far as practicable participate directly or through the support of a joint research staff in scientific research and investigation carried out for purposes of the convention;

(e) All conventions should have clear rules regarding the

rights and duties of member nations, and clear operating procedures;

(f) Conventions should clearly specify the kinds or types of measures which may be used in order to achieve their objectives;

(g) Conventions should provide for effective enforcement.

77. Nothing in these guiding principles is intended to limit the opportunity of States to make agreements on such other fishery matters as they may wish, or to limit the authority or responsibilities of a State to regulate its fisheries on the high seas when its nationals alone are involved.

78. The Conference considers that conventions, and the regulatory measures taken thereunder, should be adopted by agreement among all interested countries. The Conference draws attention, however, to the problems arising from disagreements among States as to scientific and technical matters relating to fishery conservation. Such disagreements may arise as to:

(a) The need for conservation measures or the nature of any measures to be taken; and

(b) The need to prevent regulatory measures already adopted by one State or by agreement among certain States from being nullified by refusal on the part of other States, including those newly participating in the fishery concerned, to observe such measures.

79. A solution to such problems might be found through:

(a) Agreement among States to refer such disagreements to the findings of suitably qualified and impartial experts chosen for the special case by the parties concerned, with the subsequent transmittal of the findings, if necessary, for the approval of the parties concerned, and

(b) Agreement by all States fishing a stock of fish to accept the responsibility to co-operate with other States concerned in adequate programmes of conservation research and regulation.

80. The Conference recognizes that a problem is created when the intensive exploitation of offshore waters adjoining heavily fished inshore waters, by a new fishing operation initiated by another State, considerably affects the abundance of fish in the inshore waters. This conservation problem is taken care of when the entire area is included in a conservation system involving the concerned States, and is subject to conservation regulations adequate to maintain the maximum sustainable yield. However, when no such system exists, overfishing may occur before suitable arrangements and regulations can be developed. Opinion in the Conference was more or less evenly divided as to the responsibility of the coastal State under such circumstances to institute a con-

servation programme for the fisheries concerned, pending negotiations of suitable arrangements. This problem requires further study.

81. It was the consensus of the Conference that it was not competent to express any opinion as to the appropriate extent of the territorial sea, the extent of the jurisdiction of the coastal State over fisheries, or the legal status of the superjacent waters of the continental shelf.

82. The question of the special interests, rights, duties and responsibilities of coastal States in the matter of the conservation of the living resources of the sea was discussed in the Conference. The opinion of the Conference on these matters, and on the question as to whether the Conference was competent to consider them, was more or less evenly divided.

83. It is understood that any recitals or explanations of any treaties or other formal Acts to which any of the States represented at this Conference are parties are not to be considered as legal interpretations of such treaties or formal acts.

ANNEX A

Reservations of the Delegations of Chile, Ecuador and Peru

* * *

Statement by the Delegations of Peru and Chile

The delegations of Peru and Chile abstain from voting on the conclusions contained in sections VI and VII of the Final Report, because they consider that, in some respects, their content exceeds the competence of the Conference as defined in the convening resolution of 14 December 1954 of the General Assembly of the United Nations, and because in substance they mainly reflect the trend of thought of a group in the Conference which did not hold a decisive majority. In any case, the delegations of Peru and Chile maintain the primacy of the regulations on conservation of the living resources of the sea contained in their respective national legislations and in the international conventions to which they are parties.

The delegations of Peru and Chile request that this explanation of their vote should be recorded in the report of today's session and in the Final Report of the Conference.

Rome, 10 May 1955

Statement by the Delegation of Ecuador

The delegation of Ecuador places on record that it approves section VI of the Final Report on the understanding and with the

assurance that the said section is exclusively descriptive in character and merely describes the various views held in the Conference, without making recommendations or formulating resolutions of any kind. Such, indeed, was the intention of Sub-Committee III from which it originated, and which drafted and presented it, and the Chairman of that Sub-Committee so stated when he submitted the section for examination by the Conference. Moreover, a similar statement was made by the Chairman of the plenary session at which it was discussed.

The delegation of Ecuador, in giving its approval, likewise places on record its reservation that such approval expressly leaves unimpaired any relevant constitutional and legal dispositions adopted by the Republic of Ecuador, and any stipulations of the conventions to which it has acceded, and the unshakable attitude it has taken in defence both of the inalienable rights of coastal States and of their marine resources. It makes the same reservation with regard to Section VII of the Final Report of the Conference, and to all the other sections in the Report.

Rome, 10 May 1955.

C. Developments at Inter-American Conferences— 1950–1956

1. INTRODUCTORY NOTE. There have been many interesting developments with respect to the continental shelf, territorial waters, and related questions both in national claims, treated *infra*, and at the several echelons of Inter-American Conferences, treated herein. The concerted action of Chile, Ecuador, and Peru on these matters is dealt with in the next succeeding section. The documentation of the Inter-American Conferences is itself extensive. Only the most significant documents have been chosen for reproduction here. For further study, if desired, a convenient source for developments and documentation in permanent form, and generally available in libraries, is the *Inter-American Juridical Yearbook*. Thus far, volumes have been published for 1948, 1949, 1950–51, and 1952–54 by the Pan American Union, Washington, D.C.

The study of these matters was inaugurated at the First Meeting of the Inter-American Council of Jurists at Rio de Janeiro in May of 1950. Resolution VII, adopted at that meeting, assigned to its Permanent Committee, the Inter-American Juridical Committee, the study, *inter alia*, of "System of Territorial Waters and Related Questions." The Final Act of the First Meeting is printed at pages 289–309 of the *Inter-American Juridical Yearbook*, 1950–51. Resolution VII may be found at pages 299–304 thereof. Subsequent developments are shown by the documents that follow. In addition to these documents, the following references may be helpful in tracing the developments. The Report of the Executive Secretary of the Third Meeting of the Inter-American Council of Jurists at Mexico City is published as *Pan American Union Document CIJ-30* (English) (1956). *CIJ-24* (English) (1955) *Handbook for the Third Meeting* prepared by the Department of

International Law of the Pan American Union, contains a discussion of developments at pages 5-29, and a list of legislation in force at pages 101-103. A similar survey of developments is contained in Document 2 (English), *Background Material on the Juridical Aspects of the Continental Shelf and Marine Waters*, prepared as above, for the delegates to the Ciudad Trujillo Conference, 1956. CIJ-28 (Spanish) contains the discussion and documents covering territorial waters and related questions at the Third Meeting. The texts of various statements by the United States Representative are printed in English at pages 443, 464, and 485 thereof. A report of the Third Meeting giving the United States view of the proceedings and copies of the relevant resolutions adopted may be found in 34 *Department of State Bulletin*, pages 296-299 (February 20, 1956). A comprehensive account of the developments may also be found in A/CN.4/102, 12 April 1956, a report by the Secretary of the International Law Commission of the United Nations. See also, Young, "Pan American Discussions on Offshore Claims," 50 *A.J.I.L.* 909 (1956).

2. Draft Convention on Territorial Waters and Related Questions (Inter-American Juridical Committee, Rio de Janeiro, July 30, 1952)

a. NOTE. The Inter-American Juridical Committee is the Permanent Committee of the Inter-American Council of Jurists. The Council was established pursuant to Article 57 of the Charter of the Organization of American States. The Charter is reprinted in N.W.C., *I.L. Documents 1948-49*, page 1. This Draft Convention, prepared by the Juridical Committee, is reprinted primarily to illustrate the extreme views advanced by certain Latin-American states. Hence, the Dissenting Opinion by the Delegates of Brazil, Colombia and the United States as well as the Statement of Reasons by the Majority have been omitted. The Dissenting Opinion criticized the majority on the substance of its proposals and on the ground that the procedure followed in this instance did not comply with the mandate extended to the Juridical Committee. The Draft Convention has no legal force and it was returned to the Juridical Committee for further study by Resolution XIX of the Second Meeting of the Inter-American Council of Jurists. For Resolution XIX, see the document immediately following the Draft Convention.

* * * * *

b. DRAFT CONVENTION ON TERRITORIAL WATERS AND RELATED QUESTIONS

ARTICLE 1. The signatory States recognize that present international law grants a littoral nation exclusive sovereignty over the soil, subsoil, and waters of its continental shelf, and the air space and stratosphere above it, and that this exclusive sovereignty is exercised with no requirement of real or virtual occupation.

ARTICLE 2. The signatory States likewise recognize the right of each of them to establish an area of protection, control, and economic exploitation, to a distance of two hundred nautical miles from the low-water mark along its coasts and those of its island

possessions, within which they may individually exercise military, administrative, and fiscal supervision over their respective territorial jurisdictions.

ARTICLE 3. When two or more continental shelves, or areas of protection and control, overlap, the States to which they belong shall limit the scope of their sovereignty or jurisdiction by mutual agreement or by submitting the question to the procedures established by the Parties for the settlement of international controversies.

ARTICLE 4. The principles of customary or treaty law heretofore recognized between the Parties with respect to territorial waters, and specifically those referring to the exploitation of natural resources and the rights of navigation, are applicable to the continental shelf.

ARTICLE 5. Taking into account the fact that the laws and practices of the signatory States show divergences with respect to the demarcation of the continental shelf and the area of protection, and with respect to the definition and scope of their rights thereover as regards the utilization thereof by another State, the Parties agree to study these matters jointly in order to obtain, as far as possible, a uniform system.

3. Resolution XIX, "Territorial Waters and Related Questions", of the Second Meeting of the Inter-American Council of Jurists (Buenos Aires, 1952) and Reservation of the United States Thereto

a. NOTE. Resolution XIX is included in the Final Act of the Second Meeting of the Inter-American Council of Jurists (Buenos Aires, 1953) and may be found in *Pan American Union Document CIJ-17* (English) of 9 May 1953 at pages 52-54. The Reservation of the United States to Resolution XIX is contained in the above mentioned Final Act and is reprinted in CIJ-17, *supra*, at page 66. The Final Act is also reprinted in English in *Inter-American Juridical Yearbook*, 1952-1954 at pages 192-230. The documents quoted below appear in *Ibid.*, pages 221-222, and 228-229.

* * * * *

b. RESOLUTION XIX

TERRITORIAL WATERS AND RELATED QUESTIONS

WHEREAS:

Several American countries have adopted legislation and issued declarations announcing claim to their continental and island shelves, and to their adjacent waters;

Without expressing, for the present, any opinion on the nature and scope of claims that riparian States may make to their continental and island shelves, and to their territorial waters,

it is an obvious fact that development of technical methods for exploring and exploiting the riches of these zones has had as a consequence the recognition by international law of the right of such States to protect, conserve, and promote these riches, as well as to ensure for themselves the use and benefit thereof;

A careful study must be made of the nature of the rights and of the extent to which claims to the continental and insular shelves and their adjacent waters may reach, taking into account the characteristics of the different zones of the Continent, for which it is appropriate to bear in mind the legislation of all American States on the subject, as well as their opinions, which should be obtained before arriving at a final decision;

It would be useful, in making the general study of these problems, in view of the political implications of the subject, to consider recommending to the Council of the Organization of American States that it convene a special Inter-American Conference for the purpose of enabling the States to come to agreement.

Resolution VII establishes that in studying the topic "System of Territorial Waters and Related Questions," the Permanent Committee shall proceed in accordance with the method provided in paragraph 2 of Article 2 of the plan adopted, which reads as follows:

"2. Without prejudice to the provisions of the foregoing paragraph, the Inter-American Juridical Committee may, on its own initiative, carry out such studies and work as it deems advisable for the purposes envisaged in this Plan. Nevertheless, in selecting the matters to suggest to the Council of Jurists for study, the Committee should base its decision on the following criteria or factors of evaluation:

(a) Considerations of urgency, necessity, and possibility of accomplishment, taking into account especially the information obtained from the American Governments in this regard;

(b) Opinions of professors and persons of recognized competence in the subject;

(c) Opinions of national or international societies and institutions, private or official, devoted to the study of international or comparative law;

(d) Opinions of other organizations with extensive practical experience in these activities. The reports of the Committee to the Council of Jurists suggesting

matters related to the aforementioned purposes shall present the conclusions reached in accordance with the foregoing bases.”

The observance of Article 4 of the Plan contained in Resolution VII of the first meeting of this Council in 1950, reading as follows:

“1. In the case of studies relating to the development of international law, the Permanent Committee shall limit itself to writing decisions or reports on the questions studied.

2. Such decisions or reports shall be transmitted through the General Secretariat to the several Governments so that the latter may formulate their observations thereon within three months. After this period, the Committee shall draft a new decision or report to be presented to the Council of Jurists”,

would have allowed this Second Meeting, had the Juridical Committee observed the procedure and stages set forth in that Plan, to have the necessary preparatory material to be able to reach accurate conclusions on this subject,

The Inter-American Council of Jurists

RESOLVES:

1. To return to the Inter-American Juridical Committee the subject of “System of Territorial Waters and Related Questions” referred to in clause a) under title I “Public International Law” of Resolution VII of 1950, for the continuation of its study, as provided in Article 2, paragraph 2, and in Article 4 of the said Resolution;

2. That in drafting its definitive report the Inter-American Juridical Committee shall also take into account the whereas clauses of the present Resolution;

3. To ask the Secretary General of the Organization of American States to invite the member States which have adopted, or in the future may adopt, special laws on the subject of the “System of Territorial Waters and Related Questions”, to transmit the texts thereof, together with the corresponding geographical charts, to the Inter-American Juridical Committee, in order that it may make an analytical study thereof and study them in connection with the preparation of the report it is to render to this Council of Jurists, as provided by Article 4 of Resolution VII.

(Approved at the Fourth Plenary Session, May 8, 1953)

Reservation of the United States of America

The Delegation of the United States of America, in approving the Resolution on Territorial Waters and Related Questions, does so with an explicit reservation, placing on record: that the United States of America does not approve the second paragraph of the Considerations which treats, in its opinion, of subject-matter properly to be referred to the Inter-American Juridical Committee to be dealt with as a matter "relating to the development of international law", under Article 2, paragraph 2, and Article 4 of Resolution VII adopted in 1950 by the Council of Jurists at its First Meeting, articles which in the present Resolution are referred to as being applicable, especially in view of the fact that the paragraph has not been given scientific or juridical consideration by the Second Meeting of the Inter-American Council of Jurists and in view of the fact that it affirms as an existing right matter which is not clearly defined or settled in international law.

4. Resolution LXXXIV, "Conservation of Natural Resources: the Continental Shelf and Marine Waters", of the Tenth Inter-American Conference (Caracas, 1954)

a. NOTE. Resolution LXXXIV was approved at the Tenth Inter-American Conference (Caracas, 1954). It is printed as Appendix II to Document 2 (English), *Background Material on the Juridical Aspects of the Continental Shelf and Marine Waters*, at pages 25-26, prepared by the Department of International Law of the Pan American Union. Resolution LXXXIV provides, *inter alia*, for the convocation of a Specialized Conference by the Council of the Organization of American States "for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources * * *." This conference was held in Ciudad Trujillo in 1956. Resolutions adopted at Ciudad Trujillo appear, *infra*.

b. RESOLUTION LXXXIV CONSERVATION OF NATURAL RESOURCES: THE CONTINENTAL SHELF AND MARINE WATERS

WHEREAS:

Progress in scientific research as well as technical progress have rendered possible the exploration and utilization of natural resources (biological, mineral, power, etc.) which exist in the oceanic waters, in strata submerged under the sea, and in the subsoil of the continental and insular shelf;

There is a geological continuity and physical unity between the insular and continental territory of each state and its respective submarine shelf, which forms a geographic unit with the adjoining land;

It is an obvious fact that technical development concerning the

means of exploration and exploitation of the wealth of the submarine shelf and waters of the sea has resulted in the states' proclaiming the right to protect, conserve, and develop these resources as well as to ensure their use and benefit;

It is to the general interest to conserve such wealth and to utilize it properly for the benefit of the riparian state, the Continent, and the community of nations, as was recognized in the Economic Charter of the Americas and Resolution IX adopted at the Ninth International Conference of American States, held in Bogotá in 1948, which called to the attention of the American States the fact that the continued depletion of renewable natural resources is incompatible with the objective of a higher standard of living for the American peoples, since the progressive reduction of the potential supply of food and raw materials would eventually weaken the economies of the American republics; and

It is desirable to promote, in cooperation with all the states of the Continent, the development of scientific research in the field of oceanography,

The Tenth Inter-American Conference

REAFFIRMS:

1. The interest of the American States in the national declarations or legislative acts that proclaim sovereignty, jurisdiction, control, or rights to exploitation or surveillance to a certain distance from the coast, of the submarine shelf and oceanic waters and the natural resources which may exist therein.

2. That the riparian states have a vital interest in the adoption of legal, administrative, and technical measures for the conservation and prudent utilization of the natural resources existing in, or that may be discovered in, the areas mentioned, for their own benefit and that of the Continent and the community of nations;

RESOLVES:

1. That the Council of the Organization of American States shall convoke a Specialized Conference in the year 1955 for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge.

2. That the Council request pertinent inter-American organizations to render necessary cooperation in the preparatory work that the said Specialized Conference requires; and

RECOMMENDS:

To the Council of the Organization of American States the study of the possibility of establishing in the Galapagos Islands,

in agreement with the Government of Ecuador, an Inter-American Oceanographic Institute which, in collaboration with other specialized organizations, shall give preferential attention to scientific research in oceanography in its several fields (geological, historical, static, dynamic, biological, and economic) with a view to obtaining, through the cooperation of all the Member States, a better understanding and utilization of the natural resources of oceanic waters, submerged strata, and the subsoil.

5. Resolution XIII, "Principles of Mexico on the Juridical Régime of the Sea", With Statements and Reservations Thereto, of the Third Meeting of the Inter-American Council of Jurists (Mexico City, 1956)

a. NOTE. Resolution XIII, which was adopted by a vote of 15 to 1 (the United States), purported to be a Preparatory Study for the Specialized Conference subsequently held at Ciudad Trujillo, *infra*. The Statement and Reservation of the United States, also reprinted herein, records the grave objections which the United States had to this Resolution. Five States did not vote. The other Statements appended to Resolution XIII are reprinted for their intrinsic interest as well as for their indication of differing views despite the apparent overwhelming majority in favor of the Resolution. Resolution XIV, a companion Resolution not reprinted here, recommends the transmission of Resolution XIII, together with the minutes of the relevant meetings, as a Preparatory Study for the Specialized Conference of Ciudad Trujillo. Resolution XIII, and the Statements and Reservations thereto, reprinted below, are taken from the Final Act of the Third Meeting of the Inter-American Council of Jurists as published by the Pan American Union in Document CIJ-29 (English) at pages 36-38, and 50-59.

b. RESOLUTION XIII

PRINCIPLES OF MEXICO ON THE JURIDICAL REGIME OF THE SEA

WHEREAS:

The topic "System of Territorial Waters and Related Questions: Preparatory Study for the Specialized Inter-American Conference Provided for in Resolution LXXXIV of the Caracas Conference" was included by the Council of the Organization of American States on the agenda of this Third Meeting of the Inter-American Council of Jurists; and

Its conclusions on the subject are to be transmitted to the Specialized Conference soon to be held,

The Inter-American Council of Jurists

RECOGNIZES as the expression of the juridical conscience of the Continent, and as applicable between the American States, the following rules, among others; and

DECLARES that the acceptance of these principles does not imply and shall not have the effect of renouncing or prejudicing the

position maintained by the various countries of America on the question of how far territorial waters should extend.

A

TERRITORIAL WATERS

1. The distance of three miles as the limit of territorial waters is insufficient, and does not constitute a general rule of international law. Therefore, the enlargement of the zone of the sea traditionally called "territorial waters" is justifiable.

2. Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defense.

B

CONTINENTAL SHELF

The rights of the coastal State with respect to the seabed and subsoil of its continental shelf extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all marine, animal, and vegetable species that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.

C

CONSERVATION OF LIVING RESOURCES OF THE HIGH SEAS

1. Coastal States have the right to adopt, in accordance with scientific and technical principles, measures of conservation and supervision necessary for the protection of the living resources of the sea contiguous to their coasts, beyond territorial waters. Measures taken by a coastal State in such case shall not prejudice rights derived from international agreements to which it is a party, nor shall they discriminate against foreign fishermen.

2. Coastal States have, in addition, the right of exclusive exploitation of species closely related to the coast, the life of the country, or the needs of the coastal population, as in the case of species that develop in territorial waters and subsequently migrate to the high seas, or when the existence of certain species has an important relation to an industry or activity essential to the coastal country, or when the latter is carrying out important works that will result in the conservation or increase of the species.

D

BASE LINES

1. The breadth of territorial waters shall be measured, in prin-

ciple, from the low-water line along the coast, as marked on large-scale marine charts officially recognized by the coastal State.

2. Coastal States may draw straight base lines that do not follow the low-water line when circumstances require this method because the coast is deeply indented or cut into, or because there are islands in its immediate vicinity, or when such a method is justified by the existence of economic interests peculiar to a region of the coastal State. In any of these cases the method may be employed of drawing a straight line connecting the outermost points of the coast, islands, islets, keys, or reefs. The drawing of such base lines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within these lines must be sufficiently linked to the land domain.

3. Waters located within the base line shall be subject to the régime of internal waters.

4. The coastal State shall give due publicity to the straight base lines.

E

BAYS

1. A bay is a well-marked indentation whose penetration inland in proportion to the width of its mouth is such that its waters are *inter fauces terrae*, constituting something more than a mere curvature of the coast.

2. The line that encloses a bay shall be drawn between its natural geographical entrance points where the indentation begins to have the configuration of a bay.

3. Waters comprised within a bay shall be subject to the juridical régime of internal waters if the surface thereof is equal to or greater than that of a semicircle drawn by using the mouth of the bay as a diameter.

4. If a bay has more than one entrance, this semicircle shall be drawn on a line as long as the sum total of the length of the different entrances. The area of the islands located within a bay shall be included in the total area of the bay.

5. So-called "historical" bays shall be subject to the régime of internal waters of the coastal State or States.

(Approved at the Fourth Plenary Session, February 3, 1956)

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STATEMENTS AND RESERVATIONS

RESOLUTION XIII

Statement of Panama

The Delegation of Panama desires to record its hope that at the

forthcoming conference of Santo Domingo a formula will be achieved that is more conducive to inter-American unity than the one reached in the second point of Section A on territorial waters. The position of Panama on this point was expressed at the twelfth meeting of Committee I. We consider, in brief, that with respect to the extent of territorial waters two fundamental interests exist: first, that of the coastal State, and second, that of the international community. Panama, therefore, believes that the determination of territorial waters cannot lie within the discretion of only one of those interests, that of the coastal State; and, it hopes therefore that the Conference of Santo Domingo will find a formula more favorable to the maintenance of a balance between the two interests.

Statement of The Dominican Republic

The Delegation of the Dominican Republic has abstained from voting, as announced, because it believes that the Inter-American Council of Jurists has brought into consideration questions that have been specifically assigned to the Specialized Conference provided for by the Tenth Inter-American Conference of Caracas, in Resolution LXXXIV.

Statement of Cuba

In the preamble to the resolution an obvious legal contradiction is noted. In spite of the fact that it *Recognizes* that the principles contained therein are the "Expression of the juridical conscience of the Continent", and are "applicable between the American States", the Resolution *Declares* that "the acceptance of these principles does not imply and shall not have the effect of renouncing or prejudicing the position maintained by the various countries of America on the question of how far territorial waters should extend". What value or legal effect can a declaration of principles have when in the instrument itself it appears that their acceptance will not affect the individual position maintained by the various parties to the declaration?

A

TERRITORIAL WATERS

1. With respect to the traditional principle of the marine league, the statement is made, in absolute and categorical terms, that the distance of three miles as the limit of territorial waters "is insufficient", and that "therefore, the enlargement of the zone . . . is justifiable". However, the facts do not show that a greater width for territorial waters is always justified, that is, in every case,

since one fourth of the maritime States have not claimed for their territorial waters an extent greater than three miles. It would be one thing to admit that in certain cases a greater extent is justified, but it is quite another to maintain that the limit of three miles is insufficient for all States.

2. On the other hand, the State is authorized to establish (that is, to extend) "its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defense". Practically, this is tantamount to claiming that the question of the width of territorial waters comes within the internal competence of the State, which will decide, on a subjective basis, what limit it is "reasonable" to give its territorial waters. This ignores the fact that, when considering the appropriation in full sovereignty of a maritime zone that heretofore has been a part of the high seas, it is not alone the needs and interests of the coastal State that are involved. Also involved are the needs and interests of the international community and, in particular, those of States whose nationals have devoted themselves from time immemorial and without interruption to the exploitation of the zone of the high seas affected by the extension of the territorial waters of the coastal State. The International Court of Justice, in deciding the *Anglo-Norwegian Fisheries* case (1951), declared that the delimitation of territorial waters is not a question that falls within the internal and exclusive jurisdiction of the coastal State.

B

CONTINENTAL SHELF

This part of the resolution contains a definition and an exhaustive enumeration of what should be understood by "natural resources" of the continental shelf. The Tenth Inter-American Conference (Caracas, 1954) requested the Specialized Conference to study "as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day *scientific knowledge*"; and it requested the pertinent inter-American organizations (which would include the Inter-American Council of Jurists) to render necessary cooperation in the preparatory work that the said Specialized Conference requires. Instead of confining itself to declaring the nature of the rights of the coastal State with respect to the natural resources of the seabed and the subsoil of its continental shelf, the resolution defines and enumerates the

said resources, thus invading an area of knowledge totally foreign to the nature and functions of the Inter-American Council of Jurists. What value for the Specialized Conference could scientific concepts have that are formulated by a juridical body?

C

CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

1. The resolution recognizes the right of the coastal State to adopt the conservation measures necessary for the protection of the living resources of the high seas, the only limitations being that scientific and technical principles should be followed, that rights derived from international agreements to which the coastal State is a party may not be prejudiced and that such measures may not discriminate against foreign fishermen. On the contrary, the proposal presented by Cuba and Mexico to the International Technical Conference on the Conservation of the Living Resources of the Sea (Rome, 1955), and approved by a majority of the countries represented at this Meeting of Jurists, established still other limitations to the taking of this unilateral action by the coastal State. First, that action could only be taken when there was an imperative need to conserve such resources, Second, in the event of differences between the coastal State and other interested States, either as to the scientific and technical justification of the measures taken or as to their nature and scope, the proposal stated that *such differences shall be decided by technical agencies of an international character*. The proposal also stated that the nature and scope of the problems arising at present out of the conservation of the living resources of the sea clearly suggest the necessity of solving them primarily on the basis of international cooperation, through the concerted action of all States concerned. These ideas of the proposal were accepted by the International Law Commission of the United Nations and incorporated in its latest draft on the conservation of the living resources of the sea.

2. The second paragraph of section C of the resolution includes, in the idea of "conservation" of the living resources of the high seas, the "right of exclusive exploitation" of certain maritime species. Exclusive exploitation presupposes a juridical régime totally different from that of conservation, as was made perfectly clear in our discussions. But aside from this consideration, exclusive exploitation of the living resources of the sea has, up to now, been conceivable only within the territorial waters of the State, so that to speak of it in relation to species of the high seas pre-supposes the study and knowledge of scientific elements and

economic factors that have not been studied by the Council, which, considering its nature and its necessarily limited functions, is not in a position to make such a study.

In sum, the resolution of the Council presupposes an extension of its mandate, which amounts to an encroachment upon the assignment given to the Specialized Conference by the Caracas Conference. In a certain sense one might arrive at the conclusion that that Conference has to a great extent lost its reason for being held. This is a situation that will be difficult to understand, but much more difficult still will be the fact that a meeting of jurists has arrived at conclusions on subjects that are outside the competence of persons dedicated to the study of law. What objective validity can the opinion of the Inter-American Council of Jurists have on questions and problems concerning which it lacks scientific authority? This situation is doubly regrettable because of the fact that the resolution attempts to incorporate an idea of undeniable justice: that of the special interest of the coastal State in the exploitation and conservation of the riches of the sea. But in order to serve this justified purpose the resolution should have been limited to bringing together and expressing concepts and rules of the new international law of the sea, which have reconciled the recognition and protection of the interest of the coastal state with the recognition and protection of the general interest.

Statement of Colombia

The Delegation of Colombia has abstained from voting on the foregoing resolution for the following reasons:

First, because taken by itself it does not constitute the preparatory study requested for the Specialized Conference.

Second, because its preamble declares that the clauses of the resolution are "Applicable Rules" for the American States.

In accordance with fundamental principles of international law and with the constitutional system of the American countries, a rule is not applicable and contractually binding except when it is contained in a treaty duly approved and ratified. Simple resolutions cannot have that effect. This is still more evident in the present case because the Council of Jurists is a consultative organ.

The problem is especially serious for a country like Colombia, which has no special constitutional or legislative provisions on several of the questions referred to in the resolution. Consequently, it is not possible to admit that a mere resolution of a consultative organ decides questions that must be settled as a matter of sovereignty, at the proper time, by the competent constitutional or legal organs of each State.

Third, because point A-1 confuses two different problems: one of law, which is the validity or invalidity of the three-mile limit, and the other of fact or mere desirability, which is the insufficiency of that limit. Moreover, it is in contradiction to the general system established in point A-2.

Fourth, because point A-2, which establishes the rule that the coastal State is competent to establish its territorial waters within reasonable limits, taking into account certain circumstances, was voted against by the Colombian Delegation, inasmuch as our country believes that this matter should be settled by means of special or general agreements between States.

In this respect the Delegation notes with satisfaction that its point of view has in fact been rather extensively accepted within the Council. Because while point A-2 was approved by 15 affirmative votes, with 4 opposed and 2 abstentions, three Delegations that voted affirmatively, that is, Brazil, Venezuela, and Panama, subsequently made reservations recording their disagreement with the aforesaid point A-2; and the Delegation of Nicaragua made partial objections.

The Delegation of Colombia is in agreement with the provisions relative to the continental shelf and the recognition of the rights of coastal States to conserve, supervise, and protect the resources and riches of the sea. Naturally, it accepts those provisions as a statement of principles that the Council recommends, not as rules applicable by virtue of the resolution.

On the other hand, with respect to the resources and riches of the sea, the Delegation of Colombia would have wished to exclude from the rules certain technical points that should have been left for consideration by the Specialized Conference. In this regard, the Delegation of Brazil, in its reservation, makes certain concrete observations that are worthy of being studied.

Finally, the Delegation of Colombia calls attention to the fact that, at the meeting of Committee I held on February 1, one of its members set forth in full the opinions of the Delegation.

In general the Colombian Delegation does not believe that it is desirable to adopt definitive and binding positions until after the Specialized Conference of Ciudad Trujillo has taken place, and the next General Assembly of the United Nations is held. Any prior commitment might prevent those meetings, which do have authority in the matter, from the reaching of an agreement that would permit the juridical unity of the Continent on territorial waters, a unity for which Colombia will always work, faithful to its traditional spirit of American solidarity and fraternity.

Statement of Brazil

1. The Council of the OAS included topic I-a on the agenda of the Third Meeting of the Inter-American Council of Jurists, entitled "Territorial Waters and Related Questions", in compliance with the provisions of Resolution LXXXIV of the Tenth Inter-American Conference, so that a preparatory study could be made to assist the work of the Specialized Conference that it had decided to call. This being the situation, the Delegation of Brazil considers that Resolution XIII of the Third Meeting of the Inter-American Council of Jurists is not definitive and represents, for the most part only a reaffirmation of principles emanating from doctrines and actual positions.

2. With respect to those principles, the Delegation of Brazil, in approving the draft resolution, formulates the following specific reservations:

3. As to point A-1, the Delegation of Brazil understands that the categorical statement that "the distance of three miles as the limit of territorial waters is insufficient" does not correspond to present reality in all cases. Moreover, in those cases in which it is shown that the width of the territorial waters of a coastal State is insufficient for its proper purposes, the recognition of the rights and powers of the coastal State over the contiguous zone may supplement it satisfactorily.

4. The Delegation of Brazil is of the opinion that the principle laid down in point A-2 places too much emphasis on the individual State, without consulting the interests of the international community in establishing the limits of the territorial waters of each State. The unilateral character of that principle would make it impossible to use it in working out a binding international rule, nor would it contribute to better relations among States.

5. With respect to section C of Resolution XIII, the Delegation of Brazil desires to point out that, under the general title of "Conservation of Living Resources of the High Seas" are included matters of a widely varying nature, such as the protection of the living resources of the open sea and the exclusive exploitation by the coastal State of certain species in which it has a special interest. Moreover, the principle stated in point C-1 has the same unilateral character to which we referred above, and likewise does not give proper consideration to the interests of the international community. In addition, the reservation at the end of paragraph C-1 is in conflict with the provision of point C-2, which reserves to the coastal State the exclusive right of exploitation of certain species, a rule that suffers from the same defects here pointed out.

With respect to such points, the Delegation of Brazil considers that the problem is essentially of an international nature, and that, therefore, the conciliation of divergent interests should be the object of agreements, or should be entrusted to proper international agencies.

6. The Delegation of Brazil is completely in agreement with the principle announced in section B, inasmuch as it recognizes as a rule of customary international law that the continental shelf is a part of the territory of the State to which it corresponds. Taking this view, the Brazilian Government has already determined that the Federal Union exercises rights of exclusive jurisdiction and dominion over the Brazilian continental shelf, reserving for itself also the exploitation and exploration of the natural wealth of its soil and subsoil. With regard to the waters that cover the shelf, the Brazil Government decided to continue in force the rules governing navigation, without prejudice to any rules that may later be established in that field, especially with reference to fishing.

Statement of Bolivia

Bolivia, a country that has been deprived of its maritime coast for 77 years, abstains, in harmony with its votes at previous international meetings, particularly at the Tenth Inter-American Conference of Caracas, from voting on questions having to do with the juridical régime of territorial waters, until such time as considerations of high international justice and the demands of inter-American understanding and good relations bring about an end to its land-locked situation.

Statement of Honduras

The Delegation of Honduras repeats its official position on the topic "System of Territorial Waters and Related Questions", recorded in its statement of January 28, which appears in the minutes of the eleventh meeting of Committee I.

Statement of Venezuela

The Delegation of Venezuela wishes to place on record that it has voted affirmatively on the Resolution on Territorial Waters and Related Questions in the sense that it establishes a basis for study by the Inter-American Specialized Conference; and in view of the fact that it states fundamental principles with which Venezuela is in agreement. The Delegation believes that upon being analyzed at that Conference these matters should be given special consideration.

This affirmative vote does not mean that the Delegation adheres

without qualification to the text of the resolution as it is written, and it implies only, as has been pointed out, the recognition of some of the principles announced.

With respect to territorial waters, it considers that the States have the right to extend them to reasonable limits, taking into account, besides the factors that have been mentioned, the principles that are at present recognized by international law and those that may be established in the future.

Also, Venezuela reaffirms the authority and jurisdiction that it exercises over the soil and subsoil of its continental shelf, and the right that it has to the conservation and exploitation of the natural resources there.

Statement of Guatemala

The Delegation of Guatemala, considering that Article 2 of Section D and Section E on Bays deserve greater and more detailed analysis, as well as due consideration of the applicable régimes, abstains from approving them, and states that the historic Bay of "Amatique" is subject to the exclusive sovereignty of Guatemala.

Statement and Reservation of the United States of America

For the reasons stated by the United States Representative during the sessions of Committee I, the United States voted against and records its opposition to the Resolution on Territorial Waters and Related Questions. Among the reasons indicated were the following:

That the Inter-American Council of Jurists has not had the benefit of the necessary preparatory studies on the part of its Permanent Committee which it has consistently recognized as indispensable to the formulation of sound conclusions on the subject;

That at this Meeting of the Council of Jurists, apart from a series of general statements by representatives of various countries, there has been virtually no study, analysis, or discussion of the substantive aspects of the Resolution;

That the Resolution contains pronouncements based on economic and scientific assumptions for which no support has been offered and which are debatable and which, in any event, cover matters within the competence of the Specialized Conference called for under Resolution LXXXIV of the Tenth Inter-American Conference;

That much of the Resolution is contrary to international law;

That the Resolution is completely oblivious of the interests and rights of States other than the adjacent coastal States in the conservation and utilization of marine resources and of the recognized need for international cooperation for the effective accomplishment of that common objective; and

That the Resolution is clearly designed to serve political purposes and therefore exceeds the competence of the Council of Jurists as a technical-juridical body.

In addition, the United States Delegation wishes to record the fact that when the Resolution, in the drafting of which the United States had no part, was submitted to Committee I, despite fundamental considerations raised by the United States and other delegations against the Resolution, there was no discussion of those considerations at the one and only session of the Committee held to debate the document.

Statement of Nicaragua

The Delegation of Nicaragua desires to place on record that its abstention from voting on the Draft Resolution on the System of Territorial Waters and Related Questions, approved at the Third Meeting of the Inter-American Council of Jurists, was based on this Delegation's view that first consideration should be given to the conclusions that might be reached by the Specialized Conference of Ciudad Trujillo on the technical aspects and economic needs with respect to territorial waters and related questions, in order to make it possible to formulate juridical principles that would harmonize the different tendencies that might eventually constitute a rule of international law unanimously accepted throughout the Continent.

6. Resolution I, "Resolution of Ciudad Trujillo", with Statements of the Delegations Appended Thereto, of the Inter-American Specialized Conference on "Conservation of Natural Resources: the Continental Shelf and Marine Waters" (Ciudad Trujillo, 1956)

a. NOTE. The Resolution of Ciudad Trujillo, the latest Inter-American expression on the subject, is the most realistic in recording the lack of agreement that prevails. The appended Statements are reprinted also because of their value as a cross section of Inter-American opinion. The Resolution and the Statements are taken from the Final Act of Ciudad Trujillo, *Conference and Organization Series* No. 50, published by the Pan American Union, 1956.

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b. RESOLUTION I

RESOLUTION OF CIUDAD TRUJILLO

The Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters",

CONSIDERING:

That the Council of the Organization of American States, in fulfillment of Resolution LXXXIV of the Tenth Inter-American Conference held in Caracas in March 1954, convoked this Inter-American Specialized Conference "for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge"; and

That the Conference has carried out the comprehensive study that was assigned to it,

— I —

RESOLVES:

To submit for consideration by the American states the following conclusions:

1. The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal state, outside the area of the territorial sea, and to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that state and are subject to its jurisdiction and control.

2. Agreement does not exist among the states here represented with respect to the juridical régime of the waters which cover the said submarine areas, nor with respect to the problem of whether certain living resources belong to the sea-bed or to the superjacent waters.

3. Cooperation among states is of the utmost desirability to achieve the optimum sustainable yield of the living resources of the high seas, bearing in mind the continued productivity of all species.

4. Cooperation in the conservation of the living resources of the high seas may be achieved most effectively through agreements among the states directly interested in such resources.

5. In any event, the coastal state has a special interest in the continued productivity of the living resources of the high seas adjacent to its territorial sea.

6. Agreement does not exist among the states represented at this Conference either with respect to the nature and scope of the

special interest of the coastal state, or as to how the economic and social factors which such state or other interested states may invoke should be taken into account in evaluating the purposes of conservation programs.

7. There exists a diversity of positions among the states represented at this Conference with respect to the breadth of the territorial sea.

— II —

Therefore, this Conference does not express an opinion concerning the positions of the various participating states on the matters on which agreement has not been reached and

RECOMMENDS:

That the American states continue diligently with the consideration of the matters referred to in paragraphs 2, 6, and 7 of this resolution with a view to reaching adequate solutions.

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STATEMENTS OF THE DELEGATIONS

Brazil

The Delegation of Brazil understands that the conclusions and the recommendation resulting from the over-all study made by the Conference, which are contained in the "Resolution of Ciudad Trujillo", do not forejudge the nature of the common solutions the American states and the international community should find for the questions mentioned therein.

Mexico

Statement prepared by the Delegation of Mexico with respect to the "Resolution of Ciudad Trujillo", to set forth the position of Mexico, and also the interpretation and the scope that the afore-said delegation gives to the contents of that document, concerning the matters on which there has been disagreement:

1. There is no general rule in international law setting the extent of the territorial sea.

2. Each state has the right to set the extent of its territorial sea within reasonable limits, taking into consideration both the pertinent geographical, geological, biological, economic, and social factors, and the needs of security and defense.

3. The foregoing principle makes it possible to determine the juridical régime of the waters superjacent to the continental shelf.

4. The rights of the coastal state over the continental shelf extend to all animal and vegetable species that live in a constant

relationship of physical and biological dependence with the shelf.

5. The coastal state has the right, if no agreement exists between the states concerned, to adopt the conservation and surveillance measures necessary for the protection of the living resources of the high seas adjacent to its coasts, on the basis of scientific data and applicable technical standards. The state will not act in such cases in an arbitrary or discriminatory manner.

6. The coastal state has, in specific cases, the right to the exclusive exploitation of the species closely related to the coast, to the life of the country, or to the needs of the coastal population.

The Delegation of Mexico likewise states that, since the Conference did not go on record with respect to the positions of the various participating states on the matters on which an agreement was not reached, the position of Mexico has not been in any way affected, and every aspect of that position remains unchanged, in all its force and integrity, as has been stated unilaterally, collectively, or in resolutions of inter-American organs, especially in Resolution XIII in the Final Act of the Third Meeting of the Inter-American Council of Jurists, entitled "Principles of Mexico on the Juridical Régime of the Sea".

Costa Rica, Chile, Ecuador, and Peru

The Delegations of Costa Rica, Chile, Ecuador, and Peru declare that they have voted affirmatively on the resolutions, agreements, and recommendations adopted at this Conference in the understanding that they do not alter in any way whatsoever their constitutional provisions, their national legislation, the agreements to which they are parties, or other collective international instruments they have approved.

Guatemala

The Delegation of Guatemala desires to insert in the record that the rights recognized in the "Resolution of Ciudad Trujillo" as appertaining to the coastal states include, with respect to Guatemala, the whole territory of British Honduras.

El Salvador

The Delegation of El Salvador has voted affirmatively on the "Resolution of Ciudad Trujillo" because this document does not prejudice the rights of El Salvador to the continental terrace adjacent to its coast and to its territorial sea, which, as is well known, extends to a distance of 200 nautical miles measured from the low-water line, without thereby affecting the freedom of navigation in accordance with the principles accepted by inter-

national law, as expressly stated in Article 7 of its Constitution.

Although it is not explicitly stated in the resolution, it is implicit in the first of its conclusions that the portion of the continental shelf or continental terrace covered by the territorial sea of a state forms part of its territory and is subject to the juridical régime of that territorial sea. With that understanding, the Delegation of El Salvador accepts paragraph 1 of the document as referring to the sea-bed and the subsoil of the continental shelf, continental and insular terrace, or other submarine areas adjacent to the coastal state, outside the area of the territorial sea.

In the opinion of the Delegation of El Salvador, when the aforesaid paragraph 1 states that the sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas appertain exclusively to the coastal state and are subject to its jurisdiction and control, the sovereignty of the state over such submarine areas is recognized, because the delegation understands that the exclusive proprietorship of such areas, together with the right to exercise jurisdiction and control thereover, make up without any question the concept of sovereignty—in other words, because the delegation cannot conceive those elements to be compatible with the exercise of an alien sovereignty.

With respect to natural resources, the position of El Salvador is the same as the one it maintained in Mexico, namely, that the rights of the coastal state, with respect to the sea-bed and subsoil of the continental shelf or continental terrace appertaining to it, extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all the marine species, animal and vegetable, that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.

El Salvador maintains its constitutional provision of 200 miles of territorial waters, without claiming thereby that the same extent should be adopted by all the American states, since, according to the principle recognized in Mexico, each state is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population and its security and defense.

In Part II, the resolution states that no opinion has been expressed concerning the positions of the various states participating in this Conference on the matters on which agreement has not been reached. These positions may be either individual or collective.

The Delegation of El Salvador, in voting for this resolution, did so in view of the fact that it represents the minimum area of agreement among all the American states on these problems, but

does not alter the individual or collective positions adopted by some of the states with respect to such problems.

Colombia

Colombia has been maintaining that the problems related to marine waters and the continental shelf should be subject to an agreement between the American states. This endeavor is not impossible, for if in other very difficult matters, such as that of nonintervention, the American states succeeded in overcoming their differences and so uniting their opinion that today no one discusses or objects to the matter, there is no reason why a similar understanding may not be reached in matters relating to marine spaces. For this reason, Colombia has refrained, of late, from adopting unilateral regulations, in the belief that they could wait until a common American solution was found. This is also why Colombia thought that this Conference would thoroughly study the aforementioned matters, in order to approve conclusions which would prove satisfactory to all the Continent.

In the praiseworthy desire to bring about a rapprochement among the various theses held by the American countries and to establish with precision what we might call areas of agreement and disagreement, the system of meetings of chairman of delegations was adopted. Under these circumstances, which did not make it possible to consider the proposals clause by clause, or to introduce others, the Delegation of Colombia refrained from suggesting several juridical formulas that it had studied.

Of course, Colombia accepts the "Resolution of Ciudad Trujillo", which is in accordance with the purpose of seeking and reaching unanimous solutions, points out with great pleasure the noble spirit of understanding that prevailed at the Conference, and emphasizes the importance of the policies adopted with respect to the continental shelf, international cooperation, and the special interest of the coastal state in the continuing productivity of the living resources of the high seas.

At the same time, the Delegation of Colombia expresses its sincere hope that the studies dealt with in the final part of the resolution will be continued as soon as possible. Perhaps the Council of the Organization of American States, on taking cognizance of this Final Act, might suggest a suitable way to have such studies made.

The Delegation of Colombia also notes that prompt agreement on certain topics that there was no opportunity to study might be reached later. Thus, for example, the adoption of standards for the delimitation of the continental shelves of neighboring states

does not appear to present insurmountable obstacles. Moreover, such standards would be highly beneficial, since they would prevent future controversies that might disturb inter-American relations, just as matters concerning land boundaries have disturbed them in the past. Likewise, the matter of the breadth of the territorial sea might be studied from new points of view. In this respect one might consider the study of systems that, disregarding that idea, would be directed toward protecting marine wealth, especially fisheries. The establishment of a wide area contiguous to the territorial sea, where the rights of the coastal state to regulate fishing without arbitrary discrimination would be recognized, might be one of such systems. By means of this method, the coastal state would be effectively protected, without having to link this protection to rules on the breadth of the territorial sea.

In view of the fact that a general agreement among the American states on all these problems may be delayed too long, Colombia will consider whether or not it is advisable to change its attitude of prudent waiting, and issue its own regulations on certain matters. Naturally, in so doing, if it should do so, it would not fail to bear in mind the conclusions of this Conference.

United States of America

In view of certain statements made by other delegations at the final plenary session of this Conference on March 27, or inserted in this Final Act, the Delegation of the United States of America wishes to record the following statements:

(a) The Government of the United States does not recognize a right on the part of a coastal state, as claimed by certain delegations, to exclusive control over the resources of the high seas. The United States maintains that, in accordance with international law, fishery regulations adopted by one state cannot be imposed on nationals of other states on the high seas except by agreement of the governments concerned. Moreover, the United States Delegation also wishes to record the fact that it made a specific proposal for the Conference which would, if adopted, effectively meet the conservation problem that would be posed in the event of failure of the interested states, including the coastal state, to reach agreement on the need for and application of conservation measures.

(b) The Government of the United States does not recognize that a state has competence to determine the breadth of its territorial sea apart from international law.

(c) The Delegation of the United States also wishes to call attention to the fact that broader consideration having been given

at this Conference than at any previous inter-American meeting to the various aspects of the subjects on its agenda, the present "Resolution of Ciudad Trujillo" constitutes the latest and most authoritative expression of the Organization of American States on the subjects discussed therein.

Cuba

The Delegation of Cuba has voted affirmatively on the Resolution [of Ciudad Trujillo] approved by the Conference for the following reasons:

1. The resolution recognizes the jurisdiction and control of the coastal state over the sea-bed and the subsoil of the continental shelf, the continental and insular terrace, and other submarine areas adjacent to that state beyond the limit of its territorial sea. In this sense, the resolution contains a principle of contemporary international law. Nevertheless, the recognition of this right does not in anyway affect the status of high seas that the waters covering the sea-bed and subsoil of such submarine areas have and preserve. Likewise, the resolution does not forejudge whether specific living resources belong to the sea-bed or to the superjacent waters. In the opinion of the Delegation of Cuba, which coincides with that of the International Law Commission of the United Nations, the living resources that do not come under the classification of sedentary or fixed (sessile) fisheries, belong to the superjacent waters and are subject to the juridical régime of the latter.

2. In the matter of the conservation of the living resources of the high seas, the resolution reaffirms the principle that international cooperation is the standard or most appropriate means of achieving the purposes of conservation. The resolution expresses the disagreement that arose at the Conference with respect to the nature and scope of the special interest of the coastal state. In this respect, the Delegation of Cuba also shares, in principle, the concepts and rules contained in the draft text on the subject approved by the International Law Commission during its Seventh Session (1955), as stated in detail in the course of its deliberations.

3. The resolution also expresses the existing disagreement among the American states as regards the breadth of the territorial sea. In this respect, the Delegation of Cuba, in accordance with the opinion it has consistently upheld at all previous conferences, maintains that the question of the breadth and delimitation of the territorial sea is subject to the limitations of international law, and that it is not, therefore, a matter coming within the exclusive competence of the coastal state, as was declared by

the International Court of Justice in the recent Anglo-Norwegian case on fisheries. Among these limitations there is one that the Delegation of Cuba considers to be fundamental: that any extension of the territorial sea beyond the traditional limit, may not affect in any way whatsoever the historic fishing rights acquired by nationals of a third state, who uninterruptedly, from time immemorial, have devoted their lives to this activity in the area of the high seas that such an extension covers.

4. Finally, part II of the resolution, which has been the subject of interpretation by certain delegations, does not, in the opinion of the Delegation of Cuba, pose a problem of this kind. In effect, this part of the resolution does no more than state, in unequivocal and very precise words, that the first time that the American states have studied the problems relating to the utilization and conservation of the wealth of the sea, with a view to establishing an appropriate juridical régime—that is, in the light of all the scientific, technical, and economic factors involved, as charged by the Caracas Conference—they have expressly recognized the existence of disagreement with respect to paragraphs 2, 6, and 7 of the resolution, and that, because of that fact, they recommend that the study of such matters be continued with a view to reaching adequate solutions.

Panama

The Delegation of Panama, imbued with a high inter-American spirit, and without reservations, has taken an active part in the many informal meetings held to draft the document on the continental shelf and continental terrace, the living resources of the sea, and marine waters that we have just approved, a document that, as can be readily seen, is, with some important changes, the draft originally presented by the United States for consideration by our governments.

The Delegation of Panama believes that the unanimous approval of this instrument is a constructive step toward the affirmation of continental unity. We have arrived at affirmative formulas on the few points on which there was unanimous agreement, and we have postponed the solution of other matters with the frank recognition that there is a diversity of opinion or of interests that at present makes agreement without dissent impossible. This result is characteristic of the inter-American system, founded on respect for the opinion of each and every one of the Member States of our great regional community.

The Delegation of Panama hopes that our governments and peoples represented here will find in the near future suitable

solutions to the matters that they should continue to study until formulas that can be accepted unanimously are reached. To realize this aspiration, we count on the spirit of continental unity that inspires us all and on the full knowledge of the position of every American state on these matters, which has been at least one result of recent inter-American conferences or meetings.

Uruguay

The Delegation of Uruguay approves the "Resolution of Ciudad Trujillo" with the understanding that "the positions of the various participating states" upon which the Conference has not expressed an opinion, and those to which part II (1) refers, include both the positions taken by our delegation during this Conference and those that our country has maintained or may maintain before or after it.

Venezuela

At the beginning of this Conference, the Delegation of Venezuela issued a statement containing its points of view with respect to the topics on the agenda of this transcendental meeting of representatives of the American states. It was clearly stated therein that in taking part in the deliberations on the topics that were to be studied, Venezuela would be guided by a broad spirit of cooperation. Now that the Conference is coming to a close, the Delegation of Venezuela is pleased to affirm that it has never changed its conciliatory sentiments, which, moreover, were clearly and expressively displayed by the other delegations. In voting for the resolution, happily entitled "Resolution of Ciudad Trujillo", Venezuela understands that the particular interests of the states were reconciled in the interest of continental harmony; but this fact does not entail the abolition of the basic principles of sovereignty or forejudge in any way the criterion that might prevail in the solution of the points on which there has been no agreement as yet.

D. Chile-Ecuador-Peru Agreements, 1952-1955

1. INTRODUCTORY NOTE. These Agreements are so closely related to the Inter-American documents printed in the previous section that they are placed here for convenience of reference. The Agreements, insofar as they involve claims to a maritime zone, should be compared with the national claims printed *infra*. So far as the Agreements purport to deal with conservation of fisheries, they should be compared with the conservation agreements printed in the section immediately following.

In September-October of 1955, negotiations took place in Santiago, Chile, on fishery conservation problems of this area between the United States and Chile-Ecuador-Peru. No agreement was reached. The history of the

negotiations, documents presented, and the Final Communiqué are printed in *Santiago Negotiations on Fishery Conservation Problems*, unnumbered State Department publication (1955). The history of the negotiations included therein is taken from 33 *Department of State Bulletin*, p. 1025 (December 1955). According to this account, the negotiations broke down because of basic legal differences over the Chile-Ecuador-Peru claim to a 200 mile maritime zone. On May 13, 1955, the United States presented a note to the three countries proposing that the legal dispute should be referred to the International Court of Justice, and also proposing that negotiations on a fishery conservation agreement should be undertaken. In replying on June 3, 1955, the three countries stated they were not then prepared to consider submission of the legal controversy to the International Court, but were willing to enter into negotiations. The United States replied on July 9, 1955, agreeing to negotiations, and the Santiago Conference was the result. These Notes are not now available for publication. The summary of them given in the history of the negotiations makes clear that the United States has not acquiesced in these claims. Furthermore, as indicated in the section on National Claims, *infra*, Section VI, the United States has also protested against the individual claims to 200 miles made by Chile and Peru, as has the United Kingdom. Both the United States and the United Kingdom have also made protests to Ecuador on her national legislation.

It has been recently reported that the new President of Peru has accepted the proposal of Secretary of State Dulles that a South Pacific fisheries agreement be signed with the United States and other countries, and that in the agreement Peru would drop her 200 mile claim. *The New York Times*, 28 July 1956, Section I, Page 22, Cols 3-4. The agreement will be modeled after the North Pacific Fisheries Agreement, *infra*. Any such agreement would require the concurrence of Chile and Ecuador in view of the provisions in their agreements calling for a common position. The dispatch reports also that only the fleets of the signatory states will be permitted to fish in the South Pacific region subject to conservation restrictions. More recently, however, the three countries have reaffirmed their original position at fifth meeting of their permanent commissions. Costa Rica attended as an observer. *The New York Times*, 4 October 1957, page 45, col. 6.

2. Agreements ¹ Between Chile, Ecuador and Peru Signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, 18 August 1952

* * * * * *

a. DECLARATION ON THE MARITIME ZONE ²

1. Governments are bound to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy.

¹ Ratified by all the signatory States. According to the Final Act of the Third Meeting (Quito), *infra*, Costa Rica has adhered to the Declaration on the Maritime Zone.

² *Revista Peruana de Derecho Internacional*, tomo XIV, No. 45, 1954, pp. 104 *et seq.* Translation by the Secretariat of the United Nations.

2. It is therefore the duty of each Government to ensure the conservation and protection of its natural resources and to regulate the use thereof to the greatest possible advantage of its country.

3. Hence it is likewise the duty of each Government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential food and economic materials.

For the foregoing reasons the Governments of Chile, Ecuador and Peru, being resolved to preserve for and make available to their respective peoples the natural resources of the areas of sea adjacent to their coasts, hereby declare as follows:

(I) Owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of the waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit of the conservation, development and use of those resources, to which the coastal countries are entitled.

(II) The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast.

(III) Their sole jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the sea floor and subsoil thereof.

(IV) The zone of 200 nautical miles shall extend in every direction from any island or group of islands forming part of the territory of a declarant country. The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea.

(V) This Declaration shall not be construed as disregarding the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the innocent and inoffensive passage of vessels of all nations through the zone aforesaid.

(VI) The Governments of Chile, Ecuador and Peru state that they intend to sign agreements or conventions to put into effect

the principles set forth in this Declaration and to establish general regulations for the control and protection of hunting and fishing in their respective maritime zones and the control and coordination of the use and working of all other natural products or resources of common interest present in the said waters.

* * * * *

b. ORGANIZATION OF THE STANDING COMMITTEE OF THE CONFERENCE ON THE USE AND CONSERVATION OF THE MARINE RESOURCES OF THE SOUTH PACIFIC ³

(1) To achieve the objects set forth in the Declaration of the Maritime Zone signed at this First Conference on the Use and Conservation of the Marine Resources of the South Pacific, the Governments of Chile, Ecuador and Peru agree to establish a Standing Committee composed of not more than three representatives of each. The Committee shall hold one ordinary meeting a year and any of the Governments may also convene special meetings.

The Standing Committee shall meet in accordance with a system of annual rotation, under a chairman appointed by the host Government.

(2) The Standing Committee shall establish Technical Offices to coordinate all action by the Parties in pursuance of the aims and objects of the Conference. These Offices shall not frame policy but shall merely assemble administrative, industrial, scientific, economic and statistical information relating to the objects of the Conference and circulate the same to the Parties in order to keep them duly and promptly informed. They shall likewise act as Secretariats of the Standing Committee.

(3) The Standing Committee shall carry out studies and adopt resolutions as hereinafter indicated with a view to the conservation and improved use of marine fauna and other resources, having regard to the interests of each contracting country.

The Standing Committee shall, with a view to the conservation of marine resources, standardize the regulations governing the hunting and fishing of common marine species of the contracting countries, and for this purpose shall have power—

(a) to determine protected species; open and closed seasons and areas of sea; fishing and hunting times, methods and equipment; and prohibited gear and methods; and to lay down general regulations for hunting and fishing;

(b) to study and propose to the Parties such measures as

³ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 45, 1954, pp. 105 et seq. Translation by the Secretariat of the United Nations.

it considers suitable for the protection, defence, conservation and use of marine resources ;

(c) to encourage scientific and technical study of and research into biological phenomena in the South Pacific ;

(d) to prepare general statistics of the industrial use of marine resources by the Parties, and to suggest protective measures based on the study thereof ;

(e) to deal with requests for advice on the protective measures based on study of the said statistics ;

(f) to prepare the agenda and propose dates and sites for future plenary meetings of the Conference ;

(g) to exchange scientific and technical information with other international or private organizations concerned with the study and protection of marine resources ;

(h) to ensure that the fishing and hunting quotas fixed annually by each Party in the exercise of its exclusive rights do not endanger the preservation of the marine resources of the South Pacific ;

(i) to settle all questions relating to its own operation, the organization of the Secretariats and Technical Offices, and procedural matters in general.

(4) Every resolution adopted by the Standing Committee shall have mandatory effect forthwith in each signatory State ; provided that a resolution to which a signatory State lodges an objection within ninety days shall cease to have effect in that State until the objection has been withdrawn. In computing the said period of ninety days, a Government shall be deemed to have been notified of a resolution on the date of its adoption solely by the assent of that Government's representatives thereto. If the representatives of a country are not present, notice of an agreement shall be given in writing to the diplomatic representative of that country accredited to the country in which the Committee is sitting.

(5) The signatory Governments shall enforce the agreements of the Conference and the resolutions of the Standing Committee by imposing a system of legal penalties for breaches thereof committed within their jurisdiction. In the absence of appropriate statutory penalties they shall request the competent authorities to establish the same.

Notice of the imposition of any penalty under this provision shall be given to the Standing Committee through the competent Technical Office referred to in paragraph (2). Technical Offices shall keep complete and detailed registers of all charges and penalties,

(6) Any Party may denounce this agreement by giving one full calendar year's notice of denunciation to the other Parties.

* * * * *

c. JOINT DECLARATION ON FISHERY PROBLEMS IN THE SOUTH PACIFIC ⁴

The representatives of Chile, Ecuador and Peru to the First Conference on the Use and Conservation of the Marine Resources of the South Pacific,

CONSIDERING:

That the Governments of Chile, Ecuador and Peru are concerned at the danger caused by lack of protection to the conservation of fishery resources in the maritime zones under their jurisdiction and sovereignty;

That because of the progressive development of new methods and techniques, large areas of their waters are being fished more intensively, and that some fishery resources highly important to the food supply and irreplaceable as sources of industrial materials are in serious danger of exhaustion;

That the principal species of South Pacific fauna periodically migrate and appear at certain seasons off the western coast of South America;

That there is a need to establish and apply measures of protection and conservation with a view to the improvement of yield, to the advantage of the national food supply and economies of the signatory States;

That it is necessary to standardize fishery legislation, to regulate or prohibit the use of certain destructive forms and methods of fishing, and in general to establish practices conducing to the rational use of joint marine resources;

HEREBY AGREE AS FOLLOWS:

(1) To recommend the Governments here represented to establish on their coasts and ocean islands such marine biological stations as may be necessary for the study of the migration and reproduction of the species of greatest nutritive value, in order to prevent reduction of the stocks thereof;

(2) To coordinate national and international scientific research and to enlist the cooperation of fishery organizations with similar objects;

(3) To recommend the enactment of such regulations as may be necessary for the conservation of fishery resources in the maritime zones under their jurisdiction;

⁴ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 45, 1954, pp. 107 et seq. Translation by the Secretariat of the United Nations.

(4) To recommend to the signatory Governments that licenses to fish in their maritime zones should be issued only for such fishing as does not impair the conservation of the species covered by the license and is intended to provide fish for domestic consumption or raw materials for domestic industry.

* * * * *

d. REGULATIONS GOVERNING WHALING IN THE WATERS OF THE SOUTH PACIFIC ⁵

WHEREAS

The representatives of Chile, Ecuador and Peru attending the First Conference on the Utilization and Conservation of the Marine Resources of the South Pacific are convinced of the urgent need to regulate whaling forthwith,

AND WHEREAS

It is the duty of each Government to ensure the conservation and protection of the stock of whales existing in the area of the South Pacific;

It is necessary to regulate the hunting of the said whales so as to prevent such intensive operations as might lead to the temporary or permanent extinction of that animal species, with consequent injury to the economies of the countries of the South Pacific;

The carrying on of this industry through land stations implies *per se* a restriction on whale-hunting owing to the immobility of such stations and to the limited radius of action of whale catchers;

Land stations carry on whaling operations more efficiently than factory ships, for, in addition to the fats, such stations also utilize the meat and bones of whales for the purpose of producing food-stuffs for human beings and animals;

NOW THEREFORE THE SAID REPRESENTATIVES HEREBY AGREE:

To constitute themselves a Provisional Standing Committee, and in that capacity make the following Regulations governing whaling:

ARTICLE 1. Whaling in the South Pacific, and more particularly in the maritime zones under the sovereignty or jurisdiction of the signatory States, whether carried on by land-based industries or by floating factories, shall be subject to the rules prescribed by the Conference, whose Standing Committee shall study and, in agreement with the Governments of the States aforesaid, decide

⁵ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 45, 1954, pp. 108 *et seq.* Translation by the Secretariat of the United Nations.

upon any amendment which may be advisable for the purpose of the expansion or improvement of the industries or which (so far as it is not inconsistent with the provisions agreed upon by the Conference) is consequential upon some international commitment entered into hereafter.

ARTICLE 2. The authorities of the several States shall be responsible for the control of whaling, whether carried on by floating factories or from land stations, and for the enforcement of the provisions of these Regulations.

ARTICLE 3. For the purposes of the previous article, every whaling undertaking now existing or to be organized in the future must be entered in the special register kept by the Standing Committee; every such undertaking shall file a declaration specifying the number and position of its land stations, the number and category of the whaling units at its disposal, or the number and characteristics of the ships or vessels constituting the floating factory.

ARTICLE 4. Pelagic whaling shall not be carried on in the maritime zone under the jurisdiction or sovereignty of the signatory countries except under a permit issued by the Standing Committee, which shall prescribe the conditions governing the issue of such permits. Any such permit shall not be issued except by unanimous decision of the Standing Committee.

The signatory countries shall prescribe the penalties applicable to any person who fails to comply with this provision.

ARTICLE 5. The taking and treatment of whales by a land station shall not be carried on in the maritime zone under the sovereignty or jurisdiction of a Contracting State except by an undertaking thereunto authorized by the Government concerned pursuant to these Regulations.

ARTICLE 6. An offence under these Regulations committed by an undertaking established in a Contracting State shall be punished in accordance with the legislation in force in that State.

ARTICLE 7. The crew of a whale catcher or of a factory ship, and the technical staff employed at a land station, must be registered in a special register, kept for the purpose by the Standing Committee, in which the undertaking employing the crew or staff shall be specified.

ARTICLE 8. The taking and treatment of gray or right whales shall be permitted only in cases in which the meat and products derived from the said whales are intended exclusively for consumption by the public. In no case shall such whales measuring less than 10.7 metres be taken.

ARTICLE 9. It is forbidden to take suckling whales or calves or female whales which are accompanied by their young.

ARTICLE 10. Pelagic whaling for baleen whales shall be forbidden in the maritime zone under the jurisdiction or sovereignty of the States aforesaid.

ARTICLE 11. It is forbidden to take or treat whales measuring less than the following lengths:

(a) blue whales	21.3 metres
(b) fin whales	16.8 “
(c) sei whales	12.2 “
(d) humpback whales	10.6 “
(e) sperm whales	10.7 “

ARTICLE 12. If the meat of whales is intended for use as human or animal food, the minimum sizes shall be reduced to the following (provision applicable to land stations):

- (a) 19.8 metres
- (b) 15.2 “
- (c) 10.7 “
- (d) 9.1 “

ARTICLE 13. Whales must be measured when at rest on deck or platform, as accurately as possible, by means of a steel tape measure which shall be stretched in a straight line parallel with the whale's body. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes.

ARTICLE 14. Every whale taken shall be placed at the disposal of the treatment station within forty hours after its death.

ARTICLE 15. Every whale taken shall be delivered up and shall, except for the fins, be processed in its entirety, including the internal organs.

ARTICLE 16. It shall not be necessary to treat completely the carcass of a whale found abandoned.

ARTICLE 17. The contracts of employment of the skippers, crews and gunners of factory ships and whale catchers shall include provisions under which their remuneration shall depend upon the size, and not upon the number, of the whales taken. The remuneration of persons employed ashore shall depend upon the yield of their work. In no case shall a skipper, gunner or crew member of a whale catcher receive any remuneration for units taken in circumstances constituting a breach of these Regulations.

ARTICLE 18. Every whaling undertaking is under a specific duty to communicate in writing to the competent authority and

to the Standing Committee, not later than on the fifteenth day of each month, the following particulars relating to its whaling activities in the previous month.

(a) the number of whales of each species taken ;

(b) the yield of oil, foods, fertilizers and other products derived therefrom ;

(c) the species, sex and length of each whale, whether in calf, and the size and sex, if ascertainable, of the foetus ;

(d) any other information which a skipper may directly observe concerning the calving grounds and migration routes of whales.

The competent authority of each country shall assemble all the above particulars and, supplementing the same with any other particulars which in its opinion are relevant to the whaling industry in that country, shall each year compile a complete report on the said industry and transmit a copy thereof to the Standing Committee not later than the last day of February in each year.

ARTICLE 19. Without prejudice to the provisions of articles 9, 11 and 12, the taking and treatment of sperm whales or cachalots by land stations shall not be subject to closed seasons or to a limitation of the catch.

ARTICLE 20. Not later than 31 August of each year, the signatory countries shall, after having considered their requirements, notify the Standing Committee of the number of blue-whale units which they propose to take during the ensuing calendar year, beginning on 1 January. In the light of the said notifications, the Standing Committee shall officially determine, not later than 30 September, the year's quota of baleen whales to be taken in the South Pacific.

ARTICLE 21. The year's quota of baleen whales to be taken shall be expressed in blue-whale units, the equivalent of which unit, by oil content, in other baleen whales is as follows:

One blue-whale unit equals 2 fin whales

One " " " " 2½ humpback whales

One " " " " 6 sei whales

ARTICLE 22. The skipper of a vessel engaged in the whaling industry shall be bound to notify the competent authorities immediately, by wireless, if he observes the presence of whale catchers or factory ships of foreign nationality in the waters subject to the jurisdiction of the Contracting States, and shall, in his message, report their position. He shall likewise report to the said authorities any message intercepted by him which originates

from a whaling vessel of foreign nationality and which affords grounds for suspecting that the vessel in question is engaged in whaling operations in the waters subject to the said jurisdiction.

He shall at the same time transmit a similar report to the Technical Offices of the Standing Committee.

ARTICLE 23. Each signatory Government undertakes to prevent whaling operations from being carried on in the waters subject to its jurisdiction in circumstances constituting a breach of the provisions of these Regulations.

ARTICLE 24. For the purposes of these Regulations, the following expressions shall have the meanings respectively assigned to them:

(a) "land station" means any factory or industrial establishment for the treatment of whales which is set up on the mainland or island shores of a particular country.

(b) "floating station" means any ship equipped to treat on board whales delivered to it, on condition that such ship moves on the sea, being either self-propelled or towed.

(c) "baleen whale" means any whale other than a toothed whale;

(d) "blue whale" means any whale known by the name of blue whale, Sibbald's rorqual or sulphur bottom;

(e) "finback" means any whale known by the name of fin whale, herring whale or razorback;

(f) "sei whale" means any whale known by the name of *Balaenoptera borealis* or Rudolphi's rorqual, and shall be deemed to include *Balaenoptera brydei*;

(g) "gray whale" means any whale also known by the name of California gray, devil fish, hard head or mussel digger;

(h) "humpback whale" means any whale known by the name of bunch, humpbacked whale, hump whale or hunchbacked whale;

(i) "right whale" means any whale known by the name of Pacific Arctic or Biscayan right whale, bowhead, great polar whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific whale, pigmy right whale, Southern pigmy right whale or Southern right whale;

(j) "sperm whale" means a toothed whale, cachalot, spermacet whale or pot whale;

(k) "Dauhval whale" means any unclaimed dead whale found floating with no signs of specific ownership;

(l) "quota" means the maximum number of units to be taken in the season of any one year.

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3. Agreements ⁶ between Chile, Ecuador and Peru signed at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Lima, 4 December 1954

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a. AGREEMENT SUPPLEMENTARY TO THE DECLARATION OF SOVEREIGNTY OVER THE MARITIME ZONE OF TWO HUNDRED MILES ⁷

The Governments of the Republic of Chile, Ecuador and Peru, in conformity with the provisions of Resolution X of 8 October 1954, signed at Santiago de Chile by the Standing Committee of the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific,

Having noted the proposals and recommendations approved in October of this year by the said Standing Committee,

Have appointed the following plenipotentiaries:

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AND WHEREAS

Chile, Ecuador and Peru have proclaimed their sovereignty over the sea adjacent to the coasts of their respective countries to a distance of not less than two hundred nautical miles from the said coasts, the sea-bed and the subsoil of this maritime zone being included;

The Governments of Chile, Ecuador and Peru, at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in 1952, expressed their intention of entering into agreements or conventions relating to the application of the principles governing that sovereignty, for the purpose in particular of regulating and protecting hunting and fisheries within their several maritime zones;

NOW THEREFORE THE SAID PLENIPOTENTIARIES HEREBY AGREE AS FOLLOWS:

1. Chile, Ecuador and Peru shall consult with one another for the purpose of upholding, in law, the principle of their sovereignty over the maritime zone to a distance of not less than two hundred

⁶ Ratified by Peru. According to the Final Act of the Third Meeting (Quito), *infra*, December, 1955, action on ratification is in process in the Ecuadorian and Chilean National Congresses.

⁷ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, 1954, pp. 276 *et seq.* Translation by the Secretariat of the United Nations.

nautical miles, including the sea-bed and the subsoil corresponding thereto. The term "nautical mile" means the equivalent of one 1,852.8 metres.

2. If any complaints or protests should be addressed to any of the Parties, or if proceedings should be instituted against a Party in a court of law or in an arbitral tribunal, whether possessing general or special jurisdiction, the contracting countries undertake to consult with one another concerning the case to be presented for the defence and furthermore bind themselves to co-operate fully with one another in the joint defence.

3. In the event of a violation of the said maritime zone by force, the State affected shall report the event immediately to the other Contracting Parties, for the purpose of determining what action minute of the arc measured on the Equator, or a distance of should be taken to safeguard the sovereignty which has been violated.

4. Each of the Contracting Parties undertakes not to enter into any agreements, arrangements or conventions which imply a diminution of the sovereignty over the said zone, though this provision shall not prejudice their rights to enter into agreements or to conclude contracts which do not conflict with the common rules laid down by the contracting countries.

5. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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B. AGREEMENT RELATING TO PENALTIES ⁸

1. If any person, whether a national or an alien and whether an individual or a body corporate, commits an offence against the regulations governing maritime fisheries and hunting which have been approved by the Conference, that person shall be liable to the penalties hereinafter prescribed.

2. Any such offence as aforesaid shall be punishable by the seizure of the product which is the object of the offence, in the condition in which it then is, without prejudice to the imposition of any or all of the following penalties:

⁸ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, 1954, pp. 277 et seq. Translation by the Secretariat of the United Nations.

(a) a fine of one to five times the commercial value of the product of hunting or fishing obtained through the offence;

(b) an order prohibiting the person in question from fishing or hunting in the maritime zones or from entering the ports of the contracting countries for a period which shall not be less than six months or more than three years; and

(c) in the event of a repetition of the offence, the court shall in addition impose the fines mentioned in subsection (a) above, increased at its discretion to any sum not exceeding the commercial value of the vessel or vessels which committed the offence. It may also make an order under subsection (b) providing for a prohibition to be in effect for double the period mentioned in the said subsection.

3. The vessel or vessels which committed the offence shall be under attachment pending trial, as security for the payment of the fines, unless the court has accepted some other form of security. The vessel in question shall remain answerable even in the event of a change in its nationality, ownership or management.

This provision shall apply also to any costs or disbursements which may have been occasioned, and the sum due by reason thereof shall constitute a prior charge.

4. The managing owner of the vessel and the captain or master shall be jointly liable for offences. Notices shall be served on the captain or master, who shall be deemed to be the authorized agent of the owner so long as the latter does not designate some other person to act on his behalf.

5. The court shall place at the disposal of the Standing Committee the entire cash proceeds of the fines recovered or seizures made in pursuance of these provisions relating to penalties. The Committee shall distribute these proceeds in equal shares among the Contracting Parties, subject to a deduction of 10 per cent representing receipts to be applied towards its budget.

6. In each contracting country a special court shall be constituted to try cases involving such offences and to impose the appropriate penalties. This court shall, in the several countries, be constituted in the following manner:

(a) in Chile, it shall be composed of the President of the Court of Appeal of Valparaiso, who shall act as president, the Superintendent of Customs and the Director of Coastal Areas and Merchant Marine;

(b) in Ecuador, it shall be composed of the President of the High Court of Guayaquil, who shall act as president, the Director-General of Customs and the Officer Commanding the Naval District; and

(c) in Peru, it shall be composed of the President of the High Court of Lima, who shall act as president, the Superintendent-General of Customs, and the Director of Port Authorities.

In the event of absence or impediment, any member of these courts shall be replaced by the person designated as his substitute by the law of the particular country.

7. The offences referred to in these provisions shall be tried and punished by the court of the country which effected the capture of the offender.

8. The Standing Committee is hereby empowered to propose to the several countries the rules to be observed by the courts in dealing with and adjudicating cases. Until these rules become operative, each country shall apply the provisions of municipal law.

9. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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c. AGREEMENT RELATING TO MEASURES OF SUPERVISION AND CONTROL IN THE MARITIME ZONES OF THE SIGNATORY COUNTRIES ⁹

1. It shall be the function of each signatory country to supervise and control the exploitation of the resources in its maritime zone by the use of such organs and means as it considers necessary.

2. The supervision and control referred to in section 1 shall be exercised by each country exclusively in the waters under its jurisdiction. Nevertheless, the ships or aircraft of a signatory country may enter the maritime zone of another signatory country, without requiring special authorization, in any case in which that other country expressly requests its co-operation.

3. The ships or aircraft of each of the signatory countries shall report to the authority designated in every such country the fullest particulars concerning the position, identification and occupation of the fishing or hunting vessels sighted by them in the course of their patrols. Any messages transmitted by telecommunications for this purpose shall be exempt from charges, dues and taxes. Each country shall make regulations for the purpose of giving effect to these provisions.

⁹ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, 1954, pp. 280 et seq. Translation by the Secretariat of the United Nations.

4. With a view to making supervision more effective, the technical agencies shall establish a rapid and efficient system for the exchange of information among the signatory countries.

5. Any person shall be empowered to report to the competent maritime authorities the presence of vessels engaged in the clandestine exploitation of maritime resources within the maritime zone.

6. The consuls of the signatory countries shall keep their Governments constantly informed of the preparation, departure, passage, arrival and provisioning of, and other particulars relating to all the whaling or fishing expeditions which leave or pass through the ports where the said consuls are stationed and the real or apparent destination of which is the waters of the South Pacific.

7. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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d. AGREEMENT RELATING TO THE ISSUE OF PERMITS FOR THE EXPLOITATION OF THE MARITIME RESOURCES OF THE SOUTH PACIFIC ¹⁰

1. It shall not be lawful for any person, whether an individual or body corporate to engage in hunting or fishing, the extraction of vegetable products or in any other form of exploitation of resources existing in the waters of the South Pacific within the maritime zone, unless that person has first obtained the required permit.

2. The issue of permits authorizing foreign vessels not employed by national companies, to operate in the maritime zone shall be governed by the terms of this Agreement and shall be contingent upon a favourable report by the technical agencies of each country.

Any permit for the fishing or hunting of species which are subject to international quotas shall be issued by the countries concerned, subject, however, to strict observance of the quotas fixed by the Standing Committee at its annual meeting, or in default of such meeting, by the Secretariat with the unanimous approval of the Standing Committee.

¹⁰ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, 1954, pp. 281 et seq., Translation by the Secretariat of the United Nations.

Pelagic whaling shall not be carried on in the maritime zone under the jurisdiction or sovereignty of the signatory countries except under a permit issued by the Standing Committee, which shall prescribe the conditions governing the issue of such permits. Any such permit shall not be issued except by unanimous decision of the Standing Committee.

3. The issue of a permit binds the applicant to observe the rules relating to the conservation of the species referred to in the relevant regulations and in the orders made by the contracting countries, and also to furnish security in an amount to be determined in each particular case.

4. Each permit shall specify the nature of the operations which may be carried on, the number of the species which the holder may fish or hunt, the area of sea in which he may operate, the opening and closing dates of his operations, the port at which the inspector or inspectors responsible for supervision are to be taken on board, the amount of the fees and the security which has been determined and any other conditions considered desirable for the purpose of securing compliance with the relevant regulations, including authorization to use the telecommunications service.

5. Applicants shall state at what port in any one of the countries they intend to call for the purpose of taking on board the inspectors who will ensure compliance with the relevant regulations. The costs of the services of these inspectors shall be chargeable to the applicant, with the exception of the inspectors' salaries, which shall be paid by the Government concerned.

In the discharge of their duties, the inspectors shall see to it that all the conditions are observed and shall keep a complete record of the operations.

6. Permits for national-flag vessels, or for foreign-flag vessels employed by national companies, whether engaged in fishing or hunting, authorizing them to operate in waters within the exclusive jurisdiction of any of the countries, shall continue to be issued by the competent authority in accordance with the domestic regulations in force and in conformity with the Conventions relating to the protection of maritime resources, without prejudice to the provisions of section 2, second subsection. The issue of such authorizations shall be reported to the Secretariat for the information of all the Parties.

7. Draft administrative and other regulations necessary for the proper application of this Agreement shall be prepared by the Secretariat within six months. The draft or drafts shall be submitted to the Standing Committee for approval but may be applied provisionally until that approval has been obtained.

8. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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e. AGREEMENT RELATING TO THE REGULAR ANNUAL MEETING OF THE STANDING COMMITTEE ¹¹

1. The Standing Committee shall meet annually at an appropriate date to determine the quota of sperm whales which may be hunted by foreign pelagic whaling expeditions during the whaling season from 1 July to 30 June of the following year.

2. At the said meeting the Standing Committee shall also determine the amount of the fees chargeable during the year for the issue of permits to foreign pelagic whaling expeditions. The standing Committee shall deposit the proceeds of those fees, which are the joint property of the signatory countries, in a single bank, and shall apply them to the exclusive purpose of establishing such marine biology stations as may be necessary, first preference being given to the establishment of one such station at an appropriate point in the Galapagos Islands, other stations being established later at suitable points in the South Pacific. After this first need has been satisfied, the balance shall be applied to the purpose of promoting studies and research the object of which is to improve the production, conservation and utilization of the maritime resources of the South Pacific.

3. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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f. AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE ¹²

.....

AND WHEREAS

Experience has shown that innocent and inadvertent violations

¹¹ *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, 1954, pp. 283 et seq. Translation by the Secretariat of the United Nations.

¹² *Revista Peruana de Derecho Internacional*, tomo XIV, No. 46, pp. 285 et seq. Translation by the Secretariat of the United Nations.

of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and

It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen;

NOW THEREFORE THE SAID PLENIPOTENTIARIES HEREBY AGREE AS FOLLOWS:

1. A special zone is hereby established, at a distance of 12 miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries.

2. The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words "Experience has shown" in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.

3. Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country.

4. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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4. Final Act of the Third Meeting of the Permanent Committee of the Conference on Exploitation and Conservation of the Maritime Resources of the South Pacific (Quito), December 1955. (Excerpts)

a. NOTE. According to this Final Act, previous meetings of the Permanent Committee were held in Santiago, October 1954, and in Lima, March 1955. Records of these earlier conferences were not available. The Resolutions and

Regulations here reproduced were adopted and approved, respectively, by the Third Meeting. Translation by the Department of State.

* * * * *

b. RESOLUTION ON THE QUOTA OF WHALEBONE WHALES TO BE HUNTED BY LAND STATIONS (RESOLUTION VIII)

In view of the provisions of Article 20 of the Regulations approved in 1952 on maritime hunting activities in South Pacific waters, and considering the small number of whalebone whales hunted by land stations of the South Pacific countries, as the statistics prove,

IT IS RESOLVED:

Not to set quotas for the hunting of whalebone whales by land stations for the seasons that will end June 30, 1957, national land stations consequently being free to hunt whalebone whales during that period under the conditions specified by the Regulations in force.

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c. RESOLUTION ON QUOTAS FOR THE PELAGIC HUNTING OF SPERM WHALES (RESOLUTION IX)

In view of the provisions of Article 4 of the Regulations for Maritime Hunting Activities, approved in 1952; Article 2 of the Agreement on the Granting of Permits, approved in 1954; and Articles 1 and 2 of the Agreement on Regular Annual Meetings of the Permanent Committee, approved in 1954,

IT IS RESOLVED:

1. To fix a quota of 2,100 sperm whales for pelagic hunting for the season beginning July 1, 1956, and ending June 30, 1957;

2. To fix a quota for the current season ending June 30, 1956, of an amount proportionate to the number specified in the preceding clause, in relation to the time in which the authorizations granted are in effect;

3. To fix as the fees to be paid by pelagic hunting enterprises those that result from the application of Article 27 of the Regulations on permits for exploitation of the resources of the South Pacific, approved in 1955.

* * * * *

d. REGULATIONS ON PERMITS FOR EXPLOITATION OF THE RESOURCES OF THE SOUTH PACIFIC

TITLE I

GENERAL PROVISIONS

ARTICLE 1. No natural or juristic person may engage in fishing

or hunting activities or any other exploitation of the resources existing in the maritime zone of Chile, Ecuador, or Peru without previously obtaining the appropriate permit.

ARTICLE 2. Issuance of the permit in all cases obligates the applicant to comply with the rules of conservation of the respective marine species or resources in accordance with the regulations and provisions in force in the country to which the maritime zone in which the activities will be carried on belongs.

ARTICLE 3. Permits shall be of three kinds: (a) Permits for exploitation of mineral or other resources; (b) permits for marine fishing; and (c) permits for whaling.

TITLE II

PERMITS FOR EXPLOITATION OF MINERAL RESOURCES

ARTICLE 4. All applications for permits to exploit mineral resources found in the maritime zone must be submitted to the appropriate authority of the country in which the exploitation is to be carried out.

These permits must conform to the legislative provisions of the country and shall be processed and issued pursuant thereto.

ARTICLE 5. When the permit has been issued, the appropriate authority shall so inform the General Secretariat of the Permanent Committee for the Conservation and Exploitation of the Maritime Resources of the South Pacific, through the respective National Technical Secretariat.

TITLE III

PERMITS FOR MARINE FISHING

ARTICLE 6. Applications for marine fishing permits shall be submitted to the appropriate authority of the country in whose maritime zone the activities are to be carried out.

ARTICLE 7. Applications for fishing permits for vessels of national registry or vessels of foreign registry working for national companies must contain the data required by the pertinent national legislation.

ARTICLE 8. Applications for fishing permits for vessels of foreign registry not working for national companies must state the following, in addition to the requirements of the preceding Article: the nature of the activities, amount of the species which the applicant intends to fish, with an indication of the period of time and the maritime zone in which he wishes to operate, date on which it is desired to begin the activities, their period of duration, and port of embarkation of the inspection authorities.

ARTICLE 9. In order that the provisions adopted by the Per-

manent Committee with respect to international quotas may be complied with, the Technical Secretariat of the Committee in each country shall give written notice of the said quotas to the appropriate authorities as soon as they are fixed by definitive resolution of the Committee.

ARTICLE 10. Permits requested by vessels of foreign registry not working for national companies shall be decided upon by the appropriate authorities of the country concerned in accordance with the information supplied by its technical agencies.

ARTICLE 11. Permits for fishing in the maritime zone must comply with national legislation. Those issued to vessels of foreign registry not working for national companies must in all cases state the following: nature of the activities, amount of the species which the party concerned may fish, the maritime zone where operations will take place, date of beginning and end of the period allowed for the activities, the port where the inspectors charged with control will embark, when this is judged to be necessary; authorization for use of telecommunications service; and such other conditions as are deemed desirable to ensure compliance with pertinent regulations.

ARTICLE 12. Notice of all fishing permits issued must be given by the appropriate authority to the General Secretariat of the Permanent Committee through the National Technical Secretariat.

TITLE IV

PERMITS FOR WHALING

ARTICLE 13. Permits for whaling in the maritime zone of the South Pacific are of two kinds: first, permits for land stations; second, permits for pelagic hunting of sperm whales.

Land stations are understood to be those industrial installations for the handling and processing of captured whales which are established on the mainland of the continent or on natural islands.

Pelagic hunting of whales is understood to be that activity which utilizes floating factory ships, regardless of whether they operate at sea or are anchored.

SECTION 1

WHALING PERMITS FOR LAND STATIONS

ARTICLE 14. Permits for the hunting and processing of whales by land stations shall be issued by the respective national authority.

These permits shall be governed by the legislation of the issuing country and by the regulations for maritime hunting activities of 1952, as approved by the First Conference of Santiago, Chile.

Land stations which national authorities may in future authorize

for installation must be located not less than 250 nautical miles from the nearest national land station.

ARTICLE 15. Land stations authorized under the foregoing Article must conform to the quotas for the hunting of whalebone whales determined by the Permanent Committee pursuant to Articles 20 and 21 of the Regulations for Maritime Hunting Activities, of 1952.

The Permanent Committee shall determine the quotas for the hunting of whalebone whales by land stations at the same regular meeting at which pelagic hunting quotas are fixed pursuant to Article 27.

SECTION 2

PERMITS FOR PELAGIC HUNTING OF SPERM WHALES

ARTICLE 16. National or foreign enterprises interested in engaging in pelagic hunting of sperm whales in the maritime zones of Chile, Ecuador, or Peru must have the permission of the Permanent Committee, granted by unanimity.

Permits issued under this Article shall not be transferable.

ARTICLE 17. Pelagic hunting permits issued by the Permanent Committee shall expressly reserve the hunting in a zone included between the parallels located 200 nautical miles north and south of the point at which any land station is based.

ARTICLE 18. Pelagic hunting shall be restricted to sperm whales of the size and conditions specified in existing regulations of the International Whaling Commission for this type of activity.

The provisions of this Article are without prejudice to the application in all other respects of the Regulations for Maritime Hunting Activities, of 1952.

ARTICLE 19. The Permanent Committee shall invite representatives of interested enterprises or the consuls of the countries to which they belong, to attend the meeting which the said Committee holds for the purpose of issuing permits and allotting pelagic hunting quotas.

The General Secretariat shall announce, by notices published in good time in newspapers of Oslo, . . . , Lima, Quito, and Santiago, the quota set for pelagic hunting of sperm whales in the maritime zone of the South Pacific, the date for submission of applications by the interested companies, date and place for holding the meeting of the Permanent Committee that is to make the decisions, and a general invitation to the interested parties to attend it, personally or through their representatives.

ARTICLE 20. The applications submitted by the interested parties must contain the data required according to the provisions

of Article 22 of these Regulations. In addition, compliance with Articles 3 and 7 of the Regulations on Maritime Hunting Activities, of 1952, must be shown.

ARTICLE 21. The Permanent Committee shall decide on the permit applications submitted, dividing the quota into allotments among various interested enterprises or granting it in its entirety to a single one.

ARTICLE 22. The permit granted by the Permanent Committee must state the following in each case: name and particulars of the enterprise; name of the factory ship or ships and place of registration; number of hunters; quota of sperm whales for which hunting is authorized; maritime zone of operation; date of beginning and end of the period granted for the activities; port of embarkation of the inspectors charged with control; fees to be paid by the enterprise for the permit; authorization for use of telecommunications; and such other conditions as are deemed desirable to ensure compliance with the pertinent regulations.

When the permit is granted, the representative of the authorized enterprise and the Secretary General of the Permanent Committee shall sign a document in triplicate, containing all the details of the authorization given. A marine map showing the various hunting areas and also the reserve zones stipulated in Article 17 shall form an integral part of that document.

ARTICLE 23. Enterprises authorized to engage in pelagic hunting may begin their activities on any date they consider convenient, within the established periods. They must give the General Secretariat, in writing, fifteen days in advance, notice of the date for beginning their operations and of the date on which they will be in the inspectors' port of embarkation.

ARTICLE 24. Enterprises that engage in pelagic hunting must communicate the following details to the General Secretariat of the Permanent Committee:

- (a) Number of sperm whales taken;
- (b) Yield of oil, edible products, and other products obtained;
- (c) Sex and dimensions of the whales; state of pregnancy and sex and dimensions of the foetus;
- (d) Any information that may be obtained regarding places and routes of the migration and reproduction of whales.

ARTICLE 25. The whale hunting quota authorized by each permit must be reached in uninterrupted activities from the date when operations begin to the date on which the quota is filled or the permit expires.

ARTICLE 26. Before making use of the pelagic hunting permit, the authorized national or foreign enterprise must pay to the

General Secretariat of the Permanent Committee the full amount of the fees applying thereto.

All funds received from this source shall be deposited in a single bank to the account of the Permanent Committee, for use for the purposes specified in Article 2 of the Agreement on the Regular Annual Meeting, signed in 1954.

ARTICLE 27. In order to comply with the provisions of the aforesaid Agreement on the Annual Meeting of the Permanent Committee, the said Committee shall fix at its regular meetings the annual quota of sperm whales that may be hunted in the maritime zones of the South Pacific by national or foreign pelagic (hunting) enterprises in the hunting season between July 1 and June 30 of the following year. The annual quota shall be divided into three equal subquotas, one for Chile, one for Ecuador, and one for Peru, and under no circumstances may a larger number than that authorized be taken in the maritime zone of any country.

In fixing the quota, the Committee shall take into account the statistics on sperm whale hunting compiled both by land stations and by pelagic [hunting] enterprises.

In no case may the annual pelagic hunting quota be such as to constitute a danger to the conservation of sperm whales in line with available scientific, technical, and statistical information.

ARTICLE 28. At the same Annual Meeting at which the pelagic hunting quota is fixed, the Permanent Committee shall also determine the fees to be collected during the respective annual season for the issuance of permits to national or foreign enterprises.

The Permanent Committee shall determine the amount of the fees on the basis of the tonnage of sperm oil obtained from the authorized pelagic hunting and 10 per cent of the world price for sperm oil, c.i.f. European ports, on the date the permit is granted.

Calculations shall be based on a fixed yield of 3,500 kilograms of oil for each sperm whale authorized.

ARTICLE 29. National pelagic hunting enterprises that furnish oil for consumption in their own country, within the quota assigned to them, shall be exempt from payment of the fees specified in Article 28, for the amount of oil brought into that country.

ARTICLE 30. For the purposes of the agreements and regulations in force in the South Pacific maritime zone, a national pelagic hunting enterprise is understood to be one that meets the following requirements, as a minimum:

(a) It must be located in one of the South Pacific countries and established in accordance with the legislation of that country; and

(b) It must own a factory ship or factory ships for pelagic hunting.

As an exception and for one time only, an enterprise may be considered a national enterprise if, although not owning a factory ship, it has in force a rental contract for a factory ship, with an agreement for purchase of the ship within an unextendable maximum period of one year.

ARTICLE 31. The provisions of Section 2 of Title IV are in agreement with the statements of the representatives of Chile, Ecuador, and Peru at the International Technical Conference on the Conservation of the living Resources of the Sea, held in Rome in 1955, at which the Permanent Committee of the South Pacific was recognized as an organization similar to but independent of the International Whaling Commission, in so far as whaling in the South Pacific maritime zone is concerned.

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5. Enforcement—Judgment (Opinion) of Peruvian Port Officer (1954)

a. NOTE. In the background of the Santiago negotiations, referred to *supra*, were two serious incidents involving vessels fishing in the claimed maritime zones and resulting in the seizure of the vessels and the imposition of fines by the coastal authorities. On March 27, 1955, Ecuador seized two American flag fishing vessels 14 to 25 miles west of the Island of Santa Clara off the Ecuadorian coast, and seriously wounded an American seaman by gunfire. Despite protest by the United States, fines of more than \$49,000 were imposed on the two vessels.

In November, 1954, five whaling vessels owned by A.S. Onassis and flying the Panamanian flag were seized by Peruvian naval and air units. Two were captured 160 miles off the Peruvian coast, two were attacked 300 miles off the coast, and the factory vessel was attacked 364 miles off the coast, according to information furnished by Panama to the Organization of American States. The five vessels were held until fines of 3 million dollars were paid. Lloyd's of London held 90% and United States insurers held 10% of the risk. Panama, the United Kingdom and the United States all protested to Peru. The foregoing account of the two incidents is taken from Phleger, "Some Recent Developments Affecting the Regime of the High Seas", "32 *Department of State Bulletin* (Jan.-June 1955) p. 934, at p. 937. The opinion of the Peruvian Port Authority in the case is reprinted below, and gives the Peruvian version of the facts. The *Peruvian Port Authorities and National Mercantile Marine Regulations* (approved by Presidential Decree No. 21, effective 1 January 1952), on which the proceedings were based, provides in Article 36 a right of appeal, within 24 hours *after* the fine is paid, to the Directorate of Port Authorities. Other pertinent articles of Presidential Decree No. 21 are referred to in the opinion.

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**b. JUDGMENT OF THE PORT OFFICER OF PAITA, PERU, IMPOSING
A FINE OF U.S. \$3,000,000**

(Translation by Rosa Amada Segarra from Enrique Garcia-Sayan, *Notas sobre la Soberania Maritima del Peru—Defensa de las doscientas millas de mar peruana ante las recientes transgresiones* (Lima, 1955))

Paita, 26 November, 1954

These summary proceedings were instituted on the 17th of this month against Captains Sofus Sauger, Willi Schlatermunel, Juel Eugbretson, Bjarne Anderson and Wilhelm Reichert, of the ships *Olympic Victor*, *Olympic Lightning*, *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger*, for breach respectively of articles 731, 740, 742, 743 and 764 of the Port Authorities and National Merchant Marine Regulations approved by Supreme Decree No. 21 of 31 October 1951 and commencing on 1 January 1952.

On information received by the Government that a whaling fleet under the orders of Captain Wilhelm Reichert of the *Olympic Challenger* was whaling in Peruvian territorial waters without first having obtained permission, and killing whales in breach of the international and national regulations made for the preservation of those marine resources, ships of the Peruvian Navy intercepted and arrested the two whalers *Olympic Victor* and *Olympic Lightning*; nine other whalers made off, and the *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger* were arrested later. These facts have been fully proved by the reports and maps, exhibited to the court, giving the positions and sightings and movements of the ships of the Peruvian Navy.

WHEREAS:

1. In this case none of the masters responsible for the offence the subject of these proceedings asked permission of the Supreme Government to hunt either in coastal or in deep waters.

2. The total company of all the arrested ships was 354 men, of whom 348 are German, 2 Norwegian, 1 British, 1 Chilean, 1 Canadian and 1 Greek. The crew list of the *Olympic Challenger* contains the name of Mr. Antonio Isaza in the post of *Inspector, nationality Panamanian*. None of the captains was able to exhibit the documents required to be carried by the Port Authorities Regulations and the ordinary law: such as the ship's log, engine-room log or charts, nor the whaling register or whaling schedule. This fact constitutes the strongest evidence of the unlawfulness of the operations which they were carrying out. Captain Wilhelm Reichert testified on page 5 that he threw those books into the sea in the belief that Panama and Peru were at war. This statement

was improbable, not only because of its intrinsic extravagance but also because his ship was equipped with radio and other means of communication through which he was in constant touch with the stations of his superiors. This ingenuous excuse must therefore be rejected.

3. It has been proved that the position of 11 whalers—that is, practically the whole whaling fleet—was ascertained by the ships of the Peruvian Navy, which detected and sighted them in a position exactly 110 miles from the Peruvian coast. The ships *Olympic Victor* and *Olympic Lightning* were captured at a distance of exactly 126 miles from the Peruvian coast, and the ships *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger* were intercepted later when they took to flight.

4. From the reports of the commanding officers of the ships of the squadron and from the declarations put in evidence, it appears that the whalers were first ordered to stop but did not do so until the order was supported by the measures of enforcement preliminary to the methods usually employed in these cases. These warning measures caused neither damage to the ships nor casualties among their crews.

5. It has also been proved that the arrested ships and those which made off had operated within Peruvian territorial waters and had taken between 2,500 and 3,000 whales. This was admitted in the depositions put in evidence, starting at page 3. It was necessary for the required manoeuvre that the *Olympic Challenger* should be close to the catchers. This was corroborated by the depositions of members of the crew. The fact that the *Olympic Challenger* was captured outside the 200-mile limit does not weaken that evidence in any way, for those depositions show that when the mother-ship received word of the capture of the first two of the ships just mentioned she proceeded continuously for 24 hours at high speed with special precautions, so that she was able to leave the zone and reach the point from which she was obliged to return and be impounded in this port. The *Olympic Challenger* was the ship which directed the catchers and gave them their bearings, and received and processed the catch taken within the 200-mile limit: about 6,800 tons of whale oil was found in her tanks.

6. Hunting and fishing in territorial waters is permitted only to Peruvian nationals and to aliens domiciled in the Republic, by article 731 of the *Port Authorities Regulations*. Foreign vessels are not permitted to fish in territorial waters. Whaling and the commercial utilization of its products are industries which may be carried on by any citizen of the nation or by any alien domiciled

in Peru subject to the provisions of the existing statutes and regulations. Individuals and commercial undertakings intending to engage in these industries are required to apply to the Supreme Government for a license to do so; and for whaling it is necessary to apply for a special concession under articles 740, 742 and 743 of the *Port Authorities and National Merchant Marine Regulations*. The captains and agents of the arrested ships had acted in full knowledge of the declaration of the maritime zone published by Peru, Chile and Ecuador in 1952, but none of them had obtained such a licence or special concession.

7. The Supreme Decree of 1 August 1947, considering that it is necessary that the State protect, maintain and establish a control of fisheries and other natural resources found in the continental waters which cover the submarine shelf and the adjacent continental seas in order that these resources, which are so essential to our national life, may continue to be exploited now and in the future in such a way as to cause no detriment to the country's economy or to its food production, lays down that national sovereignty and jurisdiction are to be extended over the sea adjoining the shores of the national territory, whatever its depth and in the extension necessary to preserve, protect, maintain and utilize natural resources and wealth of any kind which may be found in or below those waters. These provisions are in harmony with those of the declaration of the maritime zone signed by Peru, Chile and Ecuador on 18 August 1952, to ensure the conservation and protection of their natural resources and to regulate the use thereof to the greatest possible advantage of each country; hence it is likewise the duty of each Government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential economic materials.

These principles are defended by the *Port Authorities Regulations*, which require the issue of a special concession or license. It follows that the masters and crews of the arrested ships not only contravened the domestic law on whaling, but also acted to the prejudice of the national interests and wealth by engaging in a clandestine and unlawful form of whaling, which they attempted to conceal, encroaching on Peruvian jurisdictional waters without a licence from the authorities, and throwing overboard the documents concerning not only their location or status at sea, but also the quantity, species and age of the whales killed. It is also a matter of common knowledge and of international repute that the arrested ships belong to a person associated with an industrial

organization which disobeys and contravenes every international rule made for the defence of the species which he was hunting.

8. The principle referred to in the preceding paragraph is stated expressly and in all the necessary detail in article 764 of the *Port Authorities Regulations*, already cited more than once, which lay down that any person or undertaking intending to fish or hunt either in coastal or in deep waters shall be required to apply to the Supreme Government for a licence. This provision, in both the letter and the spirit, applies to individuals and bodies corporate, national and alien, whether domiciled in Peru or not, operating within or outside territorial waters; for the expression "deep water" hunting and fishing is expressly defined in article 735 of the *Regulations* as hunting or fishing carried on outside the territorial waters of the Republic. Unquestionably this requirement of a licence from the Supreme Government, which in the present case was not complied with, is the elementary or fundamental measure of protection which States are bound and entitled to give to the marine fauna and biological complex in the waters contiguous to their territories for the purpose of averting the extermination and disappearance of given species as a result of intensive clandestine operations which may cause irreparable harm.

9. By article 555 of the *Port Authorities Regulations* the master is the commanding officer of a merchant ship and is personally responsible for the navigation and control of the ship, her crew and her cargo, and is the representative and confidential agent of the owner. For that reason these proceedings have been brought against the masters of the ships *Olympic Victor*, *Olympic Lightning*, *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger*, because they personally conduct the venture of hunting and also because they are liable to make restitution for the damage and to suffer the penalty which is awarded to them jointly with the shipowners or proprietors, if these avail themselves of their lawful rights during these proceedings or any other proceedings which may be had in consequence thereof.

10. In this case not only has a breach of the *Port Authorities Regulations* been committed, but there has also been evasion of payment of dues and the provocative attitude of the masters and of the persons who have instructed them to respass in territorial waters. They were debarred from entering these because it was common knowledge that they had had notice of the prohibition by Peru of encroachment on her waters. Although these circumstances have not been a subject of examination, in these proceedings, they constitute circumstances aggravating the offence charged.

11. By article 33 port officers are empowered to punish offences against the *Regulations* by the penalties and in the manner set forth in that article. Article 34 lays down that any offence for which the *Regulations* do not expressly provide a penalty shall render the offender liable to a fine proportional to the gravity of the offence.

12. The act charged is an offence against the *Regulations*, punishable under the two articles just cited by a penalty appropriate to the gravity of the offence itself and also to the numerous attendant circumstances, including the use and deployment of units of the Navy and Air Force to put down the offence.

NOW THEREFORE THE COURT ORDERS AS FOLLOWS:

(1) Captains Sofus Sauger, Willi Schlatermunel, Juel Eugbretsen, Bjarne Anderson and Wilhem Reichert, masters respectively of the ships *Olympic Victor*, *Olympic Lightning*, *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger*, and the owners or proprietors of the arrested ships, whose agents at law the said masters are, shall pay jointly and in common a fine of three million dollars or its equivalent in the national currency, within five days reckoned from the date of notification of this judgment, into the Deposit Accounts Fund, Revenue Department, Lima.

(2) The ships *Olympic Victor*, *Olympic Lightning*, *Olympic Fighter*, *Olympic Conqueror* and *Olympic Challenger* shall remain impounded as security for the payment of the fine aforesaid, and shall be released on its payment in full.

SECTION III

FISHERY AGREEMENTS RELATING TO CONSERVATION OF STOCK

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A. International Convention for the Regulation of Whaling, 1946, with Annexed Schedule Containing Amendments as of 7 March 1956

1. NOTE. The 1946 Convention replaced for many of the parties the 1937 Agreement for the Regulation of Whaling, IV *Trenwith* 5573. The United Kingdom, the United States, Panama and Sweden withdrew from the 1937 Agreement effective 1 July 1949, and Australia, Canada, New Zealand and South Africa withdrew effective 1 July 1950. The Protocol of 1938 was similarly withdrawn from by the United Kingdom, United States, Canada and Panama as of 1 July 1949, and by Australia, New Zealand and South Africa as of 1 July 1950. The Geneva Convention for the Regulation of Whaling, 1931, remains in force as of October 31, 1955. The parties as of that date are given in *Treaties in Force*, at page 222.

The 1946 Convention entered into force on November 10, 1948 for the United States, United Kingdom, Australia, Norway, South Africa, Union of Soviet Socialist Republics and the Netherlands. As of 20 July 1956, Brazil, Canada, Denmark, France, Iceland, Japan, Mexico, New Zealand, Panama and Sweden had become parties. The text is printed in 62 Stat. (2) 1716; *TIAS* 1849, and *British Command Paper* No. 7604. Amendments to the Schedule were made on June 7, 1949; July 21, 1950; July 27, 1951; June 6, 1952; June 26, 1953; and July 23, 1954, and may be found in *TIAS* Numbers 2092, 2173, 2486, 2699, 2866, and 3198. Except for the 1954 Amendment, the other Amendments above may be found in *Command Paper* Numbers 7853, 7918, 8706 and 9048. Further amendments were made on 8 November 1954; 24 February 1955; 8 November 1955; and 7 March 1956, as a result of the sixth and seventh meetings of the International Whaling Commission in Tokyo and Moscow. At the eighth meeting in London, July 16–20, 1956, the Commission recommended that the catch referred to in 8(a) of the Schedule should not exceed 15,000 blue-whale units, and should not exceed 14,500 units for the 1956–57 season, with consequential changes in 8(c). These recommendations became effective 1 November 1956. *TIAS* 3739. At the conclusion of the seventh meeting (Moscow), the Commission requested the United States to prepare a Protocol amending the Convention that would permit the appointment of independent observers for factory ships in addition to national inspectors. A protocol was opened for signature in Washington on 19 November 1956, and signed by all of the seventeen States that are parties to the 1946 Convention. It will become effective when all parties have ratified. As of August 1957, eleven States have deposited their ratifications. In addition, the ratification of the United States was deposited in 30 August 1957.

The Protocol for the Regulation of Whaling for the 1947–48 Season, Washington, 2 December 1946, is contained in *Command Paper* No. 7354. The Whaling Convention Act of 1949, replacing the Whaling Treaty Act of 1936 (49 Stat. 1246; 16 U.S.C. 901–915), was approved August 9, 1950. Public Law 676, 81st Congress, 64 Stat. 421. The texts below are taken from the United States Department of the Interior certified copy, and the International Whaling Commission print of the Revised Schedule dated 7 March

1956. The text of the 1946 Convention may also be found in 43 *A.J.I.L.*, *Supp.*, 1949, pages 174–185.

* * * * *

2. International Convention for the Regulation of Whaling (1946)

Washington, 2nd December 1946

The Governments whose duly authorized representatives have subscribed hereto,

Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks;

Considering that the history of whaling has seen overfishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further overfishing;

Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the numbers of whales which may be captured without endangering these natural resources;

Recognizing that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress;

Recognizing that in the course of achieving these objectives, whaling operations should be confined to those species best able to sustain exploitation in order to give an interval for recovery to certain species of whales now depleted in numbers;

Desiring to establish a system of international regulation for the whale fisheries to ensure proper and effective conservation and development of whale stocks on the basis of the principles embodied in the provisions of the International Agreement for the Regulation of Whaling signed in London on June 8, 1937 and the protocols to that Agreement signed in London on June 24, 1938 and November 26, 1945; and

Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry;

Have agreed as follows:

ARTICLE I

1. This Convention includes the Schedule attached thereto which forms an integral part thereof. All references to "Convention" shall be understood as including the said Schedule either

in its present terms or as amended in accordance with the provisions of Article V.

2. This Convention applies to factory ships, land stations, and whale catchers under the jurisdiction of the Contracting Governments, and to all waters in which whaling is prosecuted by such factory ships, land stations, and whale catchers.

ARTICLE II

As used in this Convention

1. "factory ship" means a ship in which or on which whales are treated whether wholly or in part;

2. "land station" means a factory on the land at which whales are treated whether wholly or in part;

3. "whale catcher" means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales;

4. "Contracting Government" means any Government which has deposited an instrument of ratification or has given notice of adherence to this Convention.

ARTICLE III

1. The Contracting Governments agree to establish an International Whaling Commission, hereinafter referred to as the Commission, to be composed of one member from each Contracting Government. Each member shall have one vote and may be accompanied by one or more experts and advisers.

2. The Commission shall elect from its own members a Chairman and Vice Chairman and shall determine its own Rules of Procedure. Decisions of the Commission shall be taken by a simple majority of those members voting except that a three-fourths majority of those members voting shall be required for action in pursuance of Article V. The Rules of Procedure may provide for decisions otherwise than at meetings of the Commission.

3. The Commission may appoint its own Secretary and staff.

4. The Commission may set up, from among its own members and experts or advisers, such committees as it considers desirable to perform such functions as it may authorize.

5. The expenses of each member of the Commission and of his experts and advisers shall be determined and paid by his own Government.

6. Recognizing that specialized agencies related to the United Nations will be concerned with the conservation and development of whale fisheries and the products arising therefrom and desiring to avoid duplication of functions, the Contracting Governments will consult among themselves within two years after the coming

into force of this Convention to decide whether the Commission shall be brought within the framework of a specialized agency related to the United Nations.

7. In the meantime the Government of the United Kingdom of Great Britain and Northern Ireland shall arrange, in consultation with the other Contracting Governments, to convene the first meeting of the Commission, and shall initiate the consultation referred to in paragraph 6 above.

8. Subsequent meetings of the Commission shall be convened as the Commission may determine.

ARTICLE IV

1. The Commission may either in collaboration with or through independent agencies of the Contracting Governments or other public or private agencies, establishments or organizations, or independently

(a) encourage, recommend, or if necessary, organize studies and investigations relating to whales and whaling;

(b) collect and analyze statistical information concerning the current condition and trend of the whale stocks and the effects of whaling activities thereon;

(c) study, appraise, and disseminate information concerning methods of maintaining and increasing the populations of whale stocks.

2. The Commission shall arrange for the publication of reports of its activities, and it may publish independently or in collaboration with the International Bureau for Whaling Statistics at Sandefjord in Norway and other organizations and agencies such reports as it deems appropriate, as well as statistical, scientific, and other pertinent information relating to whales and whaling.

ARTICLE V

1. The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records.

2. These amendments of the Schedule (a) shall be such as are necessary to carry out the objectives and purposes of this Convention and to provide for the conservation, development, and optimum utilization of the whale resources; (b) shall be based on scientific findings; (c) shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land station or to any group of factory ships or land stations; and (d) shall take into consideration the interests of the consumers of whale products and the whaling industry.

3. Each of such amendments shall become effective with respect to the Contracting Governments ninety days following notification of the amendment by the Commission to each of the Contracting Governments, except that (a) if any Government presents to the Commission objection to any amendment prior to the expiration of this ninety-day period, the amendment shall not become effective with respect to any of the Governments for an additional ninety days; (b) thereupon, any other Contracting Government may present objection to the amendment at any time prior to the expiration of the additional ninety-day period, or before the expiration of thirty days from the date of receipt of the last objection received during such additional ninety-day period, whichever date shall be the later; and (c) thereafter, the amendment shall become effective with respect to all Contracting Governments which have not presented objection but shall not become effective with respect to any Government which has so objected until such date as the objection is withdrawn. The Commission shall notify each Contracting Government immediately upon receipt of each objection and withdrawal and each Contracting Government shall acknowledge receipt of all notifications of amendments, objections, and withdrawals.

4. No amendments shall become effective before July 1, 1949.

ARTICLE VI

The Commission may from time to time make recommendations to any or all Contracting Governments on any matters which relate to whales or whaling and to the objectives and purposes of this Convention.

ARTICLE VII

The Contracting Governments shall ensure prompt transmission to the International Bureau for Whaling Statistics at Sandefjord in Norway, or to such other body as the Commission may desig-

nate, of notifications and statistical and other information required by this Convention in such form and manner as may be prescribed by the Commission.

ARTICLE VIII

1. Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention. Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted.

2. Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.

3. Each Contracting Government shall transmit to such body as may be designated by the Commission, insofar as practicable, and at intervals of not more than one year, scientific information available to that Government with respect to whales and whaling, including the results of research conducted pursuant to paragraph 1 of this Article and to Article IV.

4. Recognizing that continuous collection and analysis of biological data in connection with the operations of factory ships and land stations are indispensable to sound and constructive management of the whale fisheries, the Contracting Governments will take all practicable measures to obtain such data.

ARTICLE IX

1. Each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out by persons or by vessels under its jurisdiction.

2. No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Convention.

3. Prosecution for infractions against or contraventions of this

Convention shall be instituted by the Government having jurisdiction over the offense.

4. Each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention by persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed.

ARTICLE X

1. This Convention shall be ratified and the instruments of ratification shall be deposited with the Government of the United States of America.

2. Any Government which has not signed this Convention may adhere thereto after it enters into force by a notification in writing to the Government of the United States of America.

3. The Government of the United States of America shall inform all other signatory Governments and all adhering Governments of all ratifications deposited and adherences received.

4. This Convention shall, when instruments of ratification have been deposited by at least six signatory Governments, which shall include the Governments of the Netherlands, Norway, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, enter into force with respect to those Governments and shall enter into force with respect to each Government which subsequently ratifies or adheres on the date of the deposit of its instrument of ratification or the receipt of its notification of adherence.

5. The provisions of the Schedule shall not apply prior to July 1, 1948. Amendments to the Schedule adopted pursuant to Article V shall not apply prior to July 1, 1949.

ARTICLE XI

Any Contracting Government may withdraw from this Convention on June thirtieth of any year by giving notice on or before January first of the same year to the depositary Government, which upon receipt of such a notice shall at once communicate it to the other Contracting Governments. Any other Contracting Government may, in like manner, within one month of the receipt of a copy of such a notice from the depositary Government, give notice of withdrawal, so that the Convention shall cease to be in force on June thirtieth of the same year with respect to the Government giving such notice of withdrawal.

This Convention shall bear the date on which it is opened for

signature and shall remain open for signature for a period of fourteen days thereafter.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention.

DONE in Washington this second day of December 1946, in the English language, the original of which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America shall transmit certified copies thereof to all the other signatory and adhering Governments.

[Signatures omitted.]

3. Schedule to the International Whaling Convention, 1946, Revised to Include the Amendments that Came Into Operation After the Sixth (Tokyo) and Seventh (Moscow) Meetings

7th March, 1956

SCHEDULE

(As amended by the Commission at its first, second, third, fourth, fifth, sixth and seventh meetings and subsequently brought into force.)

1. (a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four hour inspection. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship.

(b) Adequate inspection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

2. It is forbidden to take or kill gray whales or right whales, except when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.

3. It is forbidden to take or kill calves or suckling whales or female whales which are accompanied by calves or suckling whales.

4. (1) It is forbidden to kill or attempt to kill blue whales in the North Atlantic Ocean for a period of five years.¹

(2) It is forbidden to use a whale catcher attached to a factory ship for the purpose of killing or attempting to kill baleen whales in any of the following areas:

(a) in the waters north of 66° North Latitude except that

¹ This paragraph was objected to within the prescribed period ending 7th November 1954, by the Government of Iceland, and subsequently by that of Denmark. Neither objection was withdrawn and the paragraph came into force on 24th February, 1955, but is not binding on Iceland and Denmark. It ceases to operate as from 24th February, 1960.

from 150° East Longitude eastwards as far as 140° West Longitude the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

5. It is forbidden to use a whale catcher attached to a factory ship for the purpose of killing or attempting to kill baleen whales in the waters south of 40° South Latitude from 70° West Longitude westward as far as 160° West Longitude. [This article, as the result of the seventh meeting at Moscow, was rendered inoperative for a period of three years from 8th November, 1955, after which it will automatically become operative again (8th November, 1958).]

6. (1) It is forbidden to kill or attempt to kill humpback whales in the North Atlantic Ocean for a period of five years.

(2) It is forbidden to kill or attempt to kill humpback whales in the waters south of 40° South Latitude between 0° Longitude and 70° West Longitude for a period of five years.

(3) It is forbidden to use a whale catcher attached to a factory ship for the purpose of killing or attempting to kill humpback whales in any waters south of 40° South Latitude except on the 1st, 2nd, 3rd and 4th February in any year.

7. (a) It is forbidden to use a whale catcher attached to a factory ship for the purpose of killing or attempting to kill baleen whales (excluding minke whales) in any waters south of 40° South Latitude, except during the period from 7th January to 7th April, following, both days inclusive; and no such whale catcher shall be used for the purpose of killing or attempting to kill blue whales before the 1st February in any year.

(b) It is forbidden to use a whale catcher attached to a factory ship for the purpose of killing or attempting to kill sperm or minke whales, except as permitted by the Contracting Governments in accordance with sub-paragraphs (c), (d) and (e) of this paragraph.

(c) Each Contracting Government shall declare for all

factory ships and whale catchers attached thereto under its jurisdiction, one continuous open season not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted.

Provided that:

- (i) a separate open season may be declared for each factory ship and the whale catchers attached thereto:
- (ii) the open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to sub-paragraph (a) of this paragraph.

(e) Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted.

8. (a) The number of baleen whales taken during the open season caught in any waters south of 40° South Latitude by whale catchers attached to factory ships under the jurisdiction of the Contracting Governments shall not exceed fifteen thousand blue-whale units in the season 1955-56 and fourteen thousand five hundred blue-whale units thereafter.²

(b) For the purposes of sub-paragraph (a) of this paragraph, blue-whale units shall be calculated on the basis that one blue whale equals:

- (1) Two fin whales or
- (2) Two and a half humpback whales or
- (3) Six sei whales.

(c) Notification shall be given in accordance with the pro-

² The reduction for the season 1955-56 came into operation as from 8th November, 1955, and the further reduction thereafter as from 7th March 1956, but the further reduction is not binding on the Governments of the Netherlands, the United Kingdom, Panama, South Africa, Norway, Japan, U.S.A. and Canada, who lodged objections within the prescribed period.

visions of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of blue-whale units taken in any waters south of 40° South Latitude by all whale catchers attached to factory ships under the jurisdiction of each Contracting Government; provided that when the number of blue-whale units is deemed by the Bureau of International Whaling Statistics to have reached 13,500 in the season 1955-56 and 13,000 thereafter, * * notification shall be given as aforesaid at the end of each day of data on the number of blue-whale units taken.

(d) If it appears that the maximum catch of whales permitted by sub-paragraph (a) of this paragraph may be reached before 7th April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of whales shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The killing or attempting to kill baleen whales by whale catchers attached to factory ships shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(e)³ Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

9. (a) It is forbidden to take or kill any blue, sei or humpback whales below the following lengths:

Blue whales 70 feet (21.3 metres)

Sei whales 40 feet (12.2 metres)

Humpback whales 35 feet (10.7 metres)

except that blue whales of not less than 65 feet (19.8 metres) and sei whales of not less than 35 feet (10.7 metres) in length may be taken for delivery to land stations, provided that the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length for delivery to factory ships or land stations in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) for delivery to

³ NOTE.—Paragraph (e) which followed in earlier copies was deleted by the Commission at its fourth meeting in 1952 and the deletion became effective on 12th September, 1952. Original paragraph (f) consequently becomes paragraph (e).

factory ships or land stations in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken for delivery to land stations in the Southern Hemisphere and fin whales of not less than 50 feet (15.2 metres) may be taken for delivery to land stations in the Northern Hemisphere provided in each case that the meat of such whales is to be used for local consumption as human or animal food.

(c) It is forbidden to take or kill any sperm whales below 38 feet (11.6 metres) in length, except that sperm whales of not less than 35 feet (10.7 metres) in length may be taken for delivery to land stations.

(d) Whales must be measured when at rest on deck or platform, as accurately as possible by means of a steel tape fitted at the zero end with a spiked handle which can be stuck into the deck planking abreast of one end of the whale. The tape measure shall be stretched in a straight line parallel with the whale's body and read abreast the other end of the whale. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes. Measurements after being accurately read on the tape measure, shall be logged to the nearest foot, that is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. The measurement of any whale which falls on an exact half foot shall be logged at the next half foot, e.g. 76 feet 6 inches precisely shall be logged as 77 feet.

10. (a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with sub-paragraphs (b), (c) and (d) of this paragraph.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen (excluding minke) whales by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government; provided that a separate open season may be declared for any land station used for the taking or treating of baleen (excluding minke) whales which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen (excluding minke) whales under the jurisdiction of the same Contracting Government.

(c)⁴ Each Contracting Government shall declare for all land stations under its jurisdiction, and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, such period of eight months to include the whole of the period of six months declared for baleen whales (excluding minke whales) as provided for in sub-paragraph (b) of this paragraph; provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in sub-paragraph (b) of this paragraph); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government.

Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this sub-paragraph shall not cause thereby the period of time covering the open seasons declared by the same Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this paragraph shall apply to all land stations as defined in Article II of the Whaling Convention of 1946 and to all factory ships which are subject

⁴ NOTE.—This sub-paragraph 10 (c) came into force as from 21st February, 1952, in respect of all Contracting Governments, except the Commonwealth of Australia, who lodged an objection to it within the prescribed period, and this objection was not withdrawn. The provisions of this sub-paragraph are not therefore binding on the Commonwealth of Australia.

to the regulations governing the operation of land stations under the provisions of paragraph 17 of this Schedule.

11. It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, in any other area for the same purpose within a period of one year from the termination of that season.

12. (a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales (whether or not killed by whale catchers under the jurisdiction of a Contracting Government) the killing of which by whale catchers under the jurisdiction of a Contracting Government is prohibited by the provisions of paragraphs 2, 4, 5, 6, 7, 8 or 10 of this Schedule.

(b) All other whales (except minke whales) taken shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and of parts of whales intended for human food or feeding animals.

(c) Complete treatment of the carcasses of "Dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

13. (a) The taking of whales for delivery to a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

(c) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken

(2) Its species, and

(3) Its marking effected pursuant to subparagraph (b) of this paragraph.

(d) The information reported by radio pursuant to subparagraph (c) of this paragraph shall be entered immediately in a permanent record which shall be available at all times for examination for the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

- (1) Time of hauling up for treatment,
- (2) Length, measured pursuant to sub-paragraph (d) of paragraph 9,
- (3) Sex,
- (4) If female, whether milk-filled or lactating,
- (5) Length and sex of foetus, if present, and
- (6) A full explanation of each infraction.

(e) A record similar to that described in sub-paragraph (d) of this paragraph shall be maintained by land stations, and all of the information mentioned in the said sub-paragraph shall be entered therein as soon as available.

14. Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of milk-filled or lactating whales.

15. Copies of all official laws and regulations relating to whales and whaling and changes in such laws and regulations shall be transmitted to the Commission.

16. Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and land stations of statistical information (a) concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and (b) as to the aggregate amounts of oil of each grade and quantities of meal, fertilizer (guano), and other products derived from them, together with (c) particulars with respect to each whale treated in the factory ship or land station as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, is ascertainable, of the foetus. The data referred to in (a) and (c) above shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration routes of whales.

In communicating this information there shall be specified:

- (a) The name and gross tonnage of each factory ship
 - (b) The number and aggregate gross tonnage of the whale catchers
 - (c) A list of the land stations which were in operation during the period concerned.
17. (a) A factory ship which operates solely within territorial

waters in one of the areas specified in sub-paragraph (c) of this paragraph, by permission of the Government having jurisdiction over those waters, and which flies the flag of that Government shall, while so operating, be subject to the regulations governing the operation of land stations and not to the regulations governing the operation of factory ships.

(b) Such factory ship shall not, within a period of one year from the termination of the season in which she so operated, be used for the purpose of treating baleen whales in any of the other areas specified in sub-paragraph (c) of this paragraph or south of 40° South Latitude.

(c) The areas referred to in sub-paragraphs (a) and (b) are:

- (1) On the coast of Madagascar and its dependencies
- (2) On the west coasts of French Africa
- (3) On the coasts of Australia, namely on the whole east coast and on the west coast in the area known as Shark Bay and northward to North-west Cape and including Exmouth Gulf and King George's Sound, including the Port of Albany.⁵

18. (1) The following expressions have the meanings respectively assigned to them, that is to say:

“baleen whale” means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

“blue whale” (*Balaenoptera or Sibbaldus musculus*) means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom.

“dauhval” means any unclaimed dead whale found floating.

⁵ NOTE.—This paragraph 17 was inserted by the Commission at its first meeting in 1949, and came into force on 11th January, 1950, as regards all Contracting Governments except France, who therefore remain bound by the provisions of the original paragraph 17, which reads as follows:

17. Notwithstanding the definition of land station contained in Article II of the Convention, a factory ship operating under the jurisdiction of a Contracting Government, and the movements of which are confined solely to the territorial waters of that Government, shall be subject to the regulations governing the operation of land stations within the following areas:

- (a) on the coast of Madagascar and its dependencies, and on the west coasts of French Africa;
- (b) on the west coast of Australia in the area known as Shark Bay and northward to Northwest Cape and including Exmouth Gulf and King George's Sound, including the port of Albany; and on the east coast of Australia, in Twofold Bay and Jervis Bay.

“fin whale” (*Balaenoptera physalus*) means any whale known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback, or true fin whale.

“gray whale” (*Rhachianectes glaucus*) means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back or rip sack.

“humpback whale” (*Megaptera nodosa* or *novaeangliae*) means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchbacked whale.

“minke whale” (*Balaenoptera acutorostrata*, *B. Davidsoni*, *B. huttoni*) means any whale known by the name of lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp headed finner.

“right whale” (*Balaena mysticetus*; *Eubalaena glacialis*, *E. australis*, etc.; *Neobalaena marginata*) means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy right whale, or Southern right whale.

“sei whale” (*Balaenoptera borealis*) means any whale known by the name of sei whale, Rudolphi’s rorqual, pollack whale, or coalfish whale and shall be taken to include Bryde’s whale (*B. brydei*).

“sperm whale” (*Physeter catodon*) means any whale known by the name of sperm whale, spermacet whale, cachalot or pot whale.

“toothed whale” means any whale which has teeth in the jaws.

(2) “Whales taken” means whales that have been killed and either flagged or made fast to catchers.

* * * * *

B. North Atlantic

1. International Council for the Exploration of the Sea (1902). Statutes of the Council as revised 1950

a. NOTE. This Council was the first of the fishery conservation organizations. Its primary interest is in the North Sea and the Baltic stocks. Its first meeting was in Copenhagen in 1902. It gives scientific advice to the parties

to the 1946 Overfishing Convention, *infra*, as well as to its own members. It served as a basis for subsequent conservation efforts. For an illuminating survey of the problems of conservation and the organizations for conservation, see Herrington and Kask, A/Conf. 10/7, pages 145-166 (1956). For the text of the Convention for Regulating the Police of the North Sea Fisheries, to which this Council is closely related, see *U. N. Leg. Series I*, (1951), at pages 179-185. The text below is taken from the Council's own publication.

* * * * *

b. STATUTES OF THE COUNCIL AS REVISED 1950

PREAMBLE. The International Council for the Exploration of the Sea is charged with the execution of the programme for the international investigation of the sea, adopted at the Conference held in Stockholm (1899) and Christiania (1901) and subsequently modified at meetings of the Council, with the approval of the participating Governments.

Its main functions are to encourage all investigations for the study of the sea and to co-ordinate the operations to this end of the participating Governments.

Its area of operation may be roughly defined as the eastern North Atlantic Ocean and contiguous or adjacent seas, including Greenlandic and Icelandic waters.

ARTICLE 1. The Council consists of Delegates appointed by the Governments interested. Each Government appoints two Delegates who may be represented at meetings by substitutes. They may be accompanied by experts who, however, are not entitled to vote.

ARTICLE 2. The votes of the participating Delegates shall be counted in such a manner that two votes shall be reckoned for each State represented on the Council, even if only one Delegate empowered to vote for any State shall be present. The resolutions shall be decided by simple majority, the vote being taken orally.

ARTICLE 3. The engagements of the participating States are effective for five years, renewable in the last year of the quinquennial period. New States may be admitted to the Council with the unanimous approval of the participating States. The engagements of the States which have entered during a quinquennial period are effective until the end of that period.

ARTICLE 4. The rates of contributions to the expenses of the Council are decided by the Governments concerned. The contributions are due on the 22nd of July of each year in respect of the ensuing financial year.

ARTICLE 5. The Estimates and the Accounts of Expenditure run from the 1st of November to the 31st of October.

ARTICLE 6. Unless and until the participating Governments decide otherwise, the seat of the Council is at Copenhagen. The

office with the necessary personnel is also at Copenhagen, and normally the meetings of the Council are held there.

The Danish Government has undertaken, if so requested by the Council, to be the medium of communication between the Council and the participating States in respect of the renewal of participation of those States, the admission of new States and the receipt of the contributions of the participating States and their payment to the Council.

ARTICLE 7. The International Council for the Exploration of the Sea is a deliberative body, the executive authority of which is vested in the Bureau consisting of the President and four Vice-Presidents appointed annually by the Council from among its members. The Bureau is entitled to correspond directly with the Governments of the participating States.

ARTICLE 8. Subject to the preceding articles the Council draws up its own rules of procedure.

[Rules of Procedures as revised 1950 and Appendices omitted.]

2. Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish (1946)

a. **NOTE.** A Protocol which postponed the operation of Articles 5, 8, and 9 of this Convention from 5 April 1953, date of entry into force of the Convention, until 5 April 1954, is printed in *British Command Paper* No. 8815, with the text of the Convention as an Appendix. The text below is taken from this Appendix. The following States, in the order of deposit of their ratification, became parties at the times indicated: United Kingdom, 1 July, 1946; Erie, 2 January, 1950; Belgium, 9 May, 1951; Denmark, 11 April, 1947; France, 19 January, 1949; Iceland, 7 September, 1951; Netherlands, 10 January, 1948; Norway, 21 July, 1947; Poland, 22 January, 1947; Portugal, 13 July, 1950; Spain, 5 February, 1953; Sweden, 7 August, 1946. The text is also reprinted in *Cmd. 9704, Treaty Series No. 8, 1956.*

* * * * *

b. CONVENTION FOR THE REGULATION OF THE MESHES OF FISHING NETS AND THE SIZE LIMITS OF FISH

London, 5th April, 1946

CONVENTION

PREAMBLE

The Governments of Belgium, Denmark, Eire, France, Iceland, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, have agreed as follows:—

Part I.—Extent of the Convention

ARTICLE 1

The area to which this Convention applies shall be all waters which are situated within those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 48 degrees north latitude and between 42 degrees west longitude and 32 degrees east longitude, but excluding the Baltic Sea and Belts lying to the south and east of lines drawn from Hasenore Head to Gniben Point, from Korshage to Spodsbierg and from Gilbjerg Head to the Kullen.

ARTICLE 2

Nothing in the present Convention shall be deemed to diminish the exclusive right of vessels registered or owned in the territory of each Contracting Government to fish in waters where that Contracting Government has exclusive jurisdiction over fisheries.

ARTICLE 3

Nothing in this Convention shall be deemed to prejudice the claims of any Contracting Government in regard to the limits of territorial waters.

Part II.—Regulation of the Meshes of Fishing Nets and the Size Limits of Fish

ARTICLE 4

Subject to the provisions of Articles 8, 10 and 16(2), the provisions of this Convention shall apply to all vessels of any Contracting Government either when they are operating in the waters where that Contracting Government has exclusive jurisdiction over fisheries, or when they are operating outside such waters.

ARTICLE 5

No vessel shall carry on board or use any trawl, seine, or other net towed or hauled at or near the bottom of the sea, which has in any part of the net meshes of less dimensions than those specified in the First Annex to this Convention.

ARTICLE 6

Notwithstanding the provisions of Article 5, vessels fishing for mackerel, clupeoid fishes, smelts, eels, great weevs (*Trachinus draco*), shrimps, prawns, nephrops or molluscs, may carry on board and use nets having meshes of dimensions less than those so specified: provided that (a) any fishing instruments used by such

vessels for the capture of any of the fish described in this Article shall not be used for the purpose of capturing other kinds of fish; and (b) any fish of the descriptions set out in the Second Annex to this Convention which may be captured by such instruments and are of less than the minimum sizes prescribed therein shall be returned to the sea immediately after capture.

ARTICLE 7

(1) No vessel while operating shall use any device by means of which the mesh in any part of a fishing net to which Article 5 of this Convention applies is obstructed or otherwise in effect diminished.

(2) Notwithstanding the provisions of the foregoing paragraph, it shall not be deemed to be unlawful to attach to the underside of the cod-end of a trawl net any canvas, netting, or other material, for the purpose of preventing or reducing wear and tear.

ARTICLE 8

No vessel shall retain on board any sea fish of the descriptions set out in the Second Annex to this Convention, of a less size than the size prescribed therein for each fish, and all such fish shall be returned immediately to the sea; provided that they may be retained on board for the purpose of transplantation to other fishing grounds.

ARTICLE 9

Each Contracting Government undertakes to prohibit by regulations the landing, sale, exposure or offer for sale, in its territories of any sea fish of the descriptions set out in the Second Annex to this Convention which are of a less size than the size prescribed therein for each fish and have been caught in the waters defined in Article 1 of this Convention, whether such fish are whole or have had their heads or any other part removed.

ARTICLE 10

The provisions of this Convention shall not apply to fishing operations conducted for the purposes of scientific investigation, or to fish taken in the course of such operations, but fish so taken shall not be sold, or exposed or offered for sale in contravention of the provisions of Article 9.

ARTICLE 11

The Contracting Governments agree to take, in their territories and in regard to their vessels, to which this Convention applies, appropriate measures to ensure the application of the provisions

of this Convention and the punishment of infractions of the said provisions.

Part III.—Constitution of Permanent Commission

ARTICLE 12

(1) The Contracting Governments undertake to set up a permanent Commission to which each of them shall appoint one or if they so desire two delegates.

(2) The Commission shall elect its own President either from among the delegates or from independent nominees. If a delegate has been elected President he shall forthwith cease to be the delegate of his Government and that Government shall have the right to appoint another person to serve as its delegate.

(3) The Commission shall draw up its own rules of procedure including provisions for the term of office of the President and the election of subsequent Presidents and such rules may be altered or amended from time to time by a majority of the delegates of Contracting Governments who are present and vote. Only in the case of an even division of votes on any such matter shall the President have a casting vote and it shall be decisive.

(4) For the purpose of voting on all matters within the scope of this article each Contracting Government shall possess one vote, whether it has appointed one delegate or two, but the vote may be exercised by either delegate.

(5) It shall be the duty of this Commission to consider whether the provisions of this Convention should be extended or altered. For this purpose the Commission shall where practicable consult the International Council for the Exploration of the Sea.

(6) The Government of the United Kingdom of Great Britain and Northern Ireland undertakes to call the first meeting of this Commission in the United Kingdom within two years from the coming into force of this Convention, and to call subsequent meetings at the request of the President at such time and in such places as the Commission shall decide.

(7) There shall be a meeting of the Commission not less than once in every three years.

(8) The Government of the United Kingdom of Great Britain and Northern Ireland undertakes to communicate the agenda for the first meeting to all other Contracting Governments not less than one month before the date of the meeting.

(9) Reports of the proceedings of the Commission shall be transmitted by the President of the Commission to the Government of the United Kingdom of Great Britain and Northern Ireland,

which shall in turn communicate them to all the Governments which have ratified or acceded to this Convention.

(10) The Contracting Governments undertake to give effect to any recommendation of the Commission for the extension or alteration of this Convention which has been carried unanimously at a meeting of the Commission and accepted by all Contracting Governments not represented at the meeting.

ARTICLE 13

(1) For the purposes of this Convention the expression "vessel" means—

(a) any vessel or boat employed in fishing for sea fish or in the treatment of sea fish; or

(b) any vessel or boat used partly or wholly for the purpose of the transport of sea fish registered or owned in the territories of any Contracting Government.

(2) The expression "territories" denotes in relation to any Contracting Government—

(a) its metropolitan territory;

(b) any territory in respect of which action has been taken by the Contracting Government under Article 16; and

(c) the waters where the Contracting Government has exclusive jurisdiction over fisheries.

ARTICLE 14

This Convention shall be ratified as soon as possible and shall come into force ¹ two months after the deposit of instruments of ratification by all the Governments which have signed the Convention, or upon such earlier date as may be agreed between any Governments which may ratify or accede to it under Article 15 in respect of those Governments.

ARTICLE 15

(1) Any Government (other than the Government of a territory to which Article 16 applies) which has not signed this Convention may accede thereto at any time after it has come into force in accordance with Article 14. Accession shall be effected by means of a notification in writing addressed to the Government of the United Kingdom of Great Britain and Northern Ireland, and shall take effect immediately after the date of its receipt.

(2) The Government of the United Kingdom will inform all the

¹ 5th April, 1953, with the exception of Articles 5, 8 and 9.

Governments which have signed or acceded to the present Convention of all accessions received and the date of their receipt.

Part IV.—General

ARTICLE 16

(1) A Contracting Government may, at the time of signature, ratification, accession or thereafter, by a declaration in writing addressed to the Government of the United Kingdom of Great Britain and Northern Ireland, declare its desire that the present Convention shall apply to all or any of its colonies, overseas territories, protectorates or territories under mandate or trusteeship, and this Convention shall apply to all the territories named in such declaration, and to vessels registered or owned therein three months after the receipt of the declaration by the Government of the United Kingdom.

(2) In the absence of such declaration, the Convention shall not apply to any such territory.

(3) A Contracting Government may at any time, by a notification in writing addressed to the Government of the United Kingdom, express its desire that the present Convention shall cease to apply to all or any of its colonies, overseas territories, protectorates or territories under mandate or trusteeship, to which the present Convention shall have been made applicable under the provisions of paragraph (1) of this article, and the Convention shall cease to apply to the territories named in the notification and to vessels registered or owned therein three months after the receipt of the notification by the Government of the United Kingdom.

(4) The Government of the United Kingdom will inform all the Governments which have signed or acceded to the present Convention of any declaration or notification received under paragraphs (1) and (3) of this article stating in each case the date from which the present Convention has become or will cease to be applicable to the territory or territories specified in the declaration or notification, as the case may be.

ARTICLE 17

As from the date of the coming into force of this Convention, the provisions of the International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, signed in London on the 23rd March 1937,² shall, as far as they have been

² *Miscellaneous No. 5 (1937), Cmd. 5494.*

or are applied by any Contracting Government which was a party to that Convention, be replaced by the provisions of this Convention.

ARTICLE 18

After the expiration of three years from the date of its coming into force in accordance with Article 14, this Convention may be denounced by means of a notification in writing addressed to the Government of the United Kingdom of Great Britain and Northern Ireland. The denunciation shall take effect in respect of the Government by which it is made three months after the date of its receipt, and will be notified to the Contracting Governments by the Government of the United Kingdom.

In witness whereof the undersigned, duly authorized thereto, have signed the present Convention.

Done in London the 5th day of April, 1946, in a single copy in the English language. A French text of the Convention shall be prepared and after approval by all the signatory Governments shall be regarded as being of equal validity to the English text. Both texts of the Convention shall thereupon be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland.

Certified copies of the Convention shall be communicated to the signatory and acceding Governments.

[Signatures omitted]

ANNEX I

(1) In all waters covered by the Convention, as defined in Article 1 and Article 4, except as provided in paragraph (2) below, the minimum size of mesh for nets referred to in Article 5 shall be such that when the mesh is stretched diagonally lengthwise of the net a flat gauge 80 mm. broad and 2 mm thick shall pass through it easily when the net is wet.

(2) In the waters situated north of 66 degrees north latitude and east of the meridian of Greenwich and in Icelandic waters between the parallels of 68 degrees and 62 degrees north latitude and between the meridians of 28 degrees and 10 degrees west longitude, the minimum size of mesh for nets referred to in Article 5 shall be such that when the mesh is stretched diagonally lengthwise of the net a flat gauge 110 mm. broad and 2 mm. thick shall pass through it easily when the net is wet.

ANNEX II

The fish to which Articles 6, 8 and 9 of this Convention apply

and the sizes below which such fish may not be retained on board, landed, or sold and exposed or offered for sale are as follows:

Fish	Size limit for whole Fish measured from tip of snout to extreme end of tail fin Cm.
Cod (<i>Gadus callarias</i>)	30
Haddock (<i>Gadus aeglefinus</i>)	27
Hake (<i>Merluccius merluccius</i>)	30
Plaice (<i>Pleuronectes platessa</i>)	25
Witches (<i>Glyptocephalus cynoglossus</i>)	28
Lemon soles (<i>Microstomus kitt</i>)	25
Soles (<i>Solea solea</i>)	24
Turbot (<i>Scophthalmus maximus</i>)	30
Brill (<i>Scophthalmus rhombus</i>)	30
Megrims (<i>Lepidorhombus whiff</i>)	25
Whittings (<i>Gadus merlangus</i>)	20
Dabs (<i>Pleuronectes limanda</i>)	20

3. International Convention for the North-West Atlantic Fisheries (1949)

a. NOTE. Prior to this Convention, there was a North American Council on Fishery Investigations, which was active from 1920 to 1938, and which was organized by Canada, Newfoundland, the United States and France, for coordinating research on the area. The 1949 Convention entered into force on 3 July 1950. As of October 31, 1955, Canada, Denmark, France with a declaration, Iceland, Italy, Norway, Portugal, Spain with a declaration, the United Kingdom, and the United States had become parties. *Treaties in Force*, page 160. The Federal Republic of Germany adhered to the Convention on 27 June 1957. The text may be found in 1 *UST* 477; *TIAS* 2089, and 157 *UNTS* 157. The Convention was signed at Washington, 8 February 1949; ratification was advised by the Senate, 17 August 1949; ratified by the President, 1 September 1949; deposited by the United States, 1 September 1949; and proclaimed by the President, 17 July 1950. The text is also reprinted in 45 *A.J.I.L.*, Supp., 1951, pages 40-50. The text below is taken from *British Command Paper* No. 8071. A Protocol amending the Convention in order to permit the holding of annual meetings outside of North America was signed at Washington, 25 June 1956. As of August 1957, it is not yet in force. It awaits ratifications by France. All other parties have ratified, and the Federal Republic of Germany has adhered.

b. INTERNATIONAL CONVENTION FOR THE NORTH-WEST ATLANTIC FISHERIES

Washington, 8th February, 1949

The Governments whose duly authorized representatives have subscribed hereto, sharing a substantial interest in the conservation of the fishery resources of the North-West Atlantic Ocean, have resolved to conclude a Convention for the investigation, protection and conservation of the fisheries of the North-West

Atlantic Ocean, in order to make possible the maintenance of a maximum sustained catch from those fisheries and to that end have, through their duly authorized representatives, agreed as follows:

ARTICLE I

1. The area to which this Convention applies, hereinafter referred to as 'the Convention area,' shall be all waters, except territorial waters, bounded by a line beginning at a point on the coast of Rhode Island in $71^{\circ} 40'$ west longitude; thence due south to $39^{\circ} 00'$ north latitude; thence due east to $42^{\circ} 00'$ west longitude; thence due north to $59^{\circ} 00'$ north latitude; thence due west to $44^{\circ} 00'$ west longitude; thence due north to the coast of Greenland; thence along the west coast of Greenland to $78^{\circ} 10'$ north latitude; thence southward to a point in $75^{\circ} 10'$ north latitude and $73^{\circ} 30'$ west longitude; thence along a rhumb line to a point in $69^{\circ} 00'$ north latitude and $59^{\circ} 00'$ west longitude; thence due south to $61^{\circ} 00'$ north latitude; thence due west to $64^{\circ} 30'$ west longitude; thence due south to the coast of Labrador; thence in a southerly direction along the coast of Labrador to the southern terminus of its boundary with Quebec; thence in a westerly direction along the coast of Quebec, and in an easterly and southerly direction along the coasts of New Brunswick, Nova Scotia, and Cape Breton Island to Cabot Strait; thence along the coasts of Cape Breton Island, Nova Scotia, New Brunswick, Maine, New Hampshire, Massachusetts, and Rhode Island to the point of beginning.

2. Nothing in this Convention shall be deemed to affect adversely (prejudice) the claims of any Contracting Government in regard to the limits of territorial waters or to the jurisdiction of a coastal state over fisheries.

3. The Convention area shall be divided into five sub-areas, the boundaries of which shall be those defined in the Annex to this Convention, subject to such alterations as may be made in accordance with the provisions of paragraph 2 of Article VI.

ARTICLE II

1. The Contracting Governments shall establish and maintain a Commission for the purposes of this Convention. The Commission shall be known as the International Commission for the North-West Atlantic Fisheries, hereinafter referred to as 'the Commission.'

2. Each of the Contracting Governments may appoint not more than three Commissioners and one or more experts or advisers to assist its Commissioner or Commissioners.

3. The Commission shall elect from its members a Chairman and a Vice Chairman, each of whom shall serve for a term of two years and shall be eligible for re-election but not to a succeeding term. The Chairman and Vice Chairman must be Commissioners from different Contracting Governments.

4. The seat of the Commission shall be in North America at a place to be chosen by the Commission.

5. The Commission shall hold a regular annual meeting at its seat or at such place in North America as may be agreed upon by the Commission.

6. Any other meeting of the Commission may be called by the Chairman at such time and place as he may determine, upon the request of the Commissioner of a Contracting Government and subject to the concurrence of the Commissioners of two other Contracting Governments, including the Commissioner of a Government in North America.

7. Each Contracting Government shall have one vote which may be cast by any Commissioner from that Government. Decisions of the Commission shall be taken by a two-thirds majority of the votes of all the Contracting Governments.

8. The Commission shall adopt, and amend as occasion may require, financial regulations and rules and by-laws for the conduct of its meetings and for the exercise of its functions and duties.

ARTICLE III

1. The Commission shall appoint an Executive Secretary according to such procedure and on such terms as it may determine.

2. The Staff of the Commission shall be appointed by the Executive Secretary in accordance with such rules and procedures as may be determined and authorized by the Commission.

3. The Executive Secretary shall, subject to the general supervision of the Commission, have full power and authority over the staff and shall perform such other functions as the Commission shall prescribe.

ARTICLE IV

1. The Contracting Governments shall establish and maintain a Panel for each of the sub-areas provided for by Article I, in order to carry out the objectives of this Convention. Each Contracting Government participating in any Panel shall be represented on such Panel by its Commissioner or Commissioners, who may be assisted by experts or advisers. Each Panel shall elect from its members a Chairman who shall serve for a period of two

years and shall be eligible for re-election but not to a succeeding term.

2. After this Convention has been in force for two years, but not before that time, Panel representation shall be reviewed annually by the Commission, which shall have the power, subject to consultation with the Panel concerned, to determine representation on each Panel on the basis of current substantial exploitation in the sub-area concerned of fishes of the cod group (*Gadiformes*), or flatfishes (*Pleuronectiformes*), and of rosefish (*genus Sebastes*), except that each Contracting Government with coast-line adjacent to a sub-area shall have the right of representation on the Panel for the sub-area.

3. Each Panel may adopt, and amend as occasion may require, rules of procedure and by-laws for the conduct of its meetings and for the exercise of its functions and duties.

4. Each Government participating in a Panel shall have one vote, which shall be cast by a Commissioner representing that Government. Decisions of the Panel shall be taken by a two-thirds majority of the votes of all the Governments participating in that Panel.

5. Commissioners of Contracting Governments not participating in a particular Panel shall have the right to attend the meetings of such Panel as observers, and may be accompanied by experts and advisers.

6. The Panels shall, in the exercise of their functions and duties, use the services of the Executive Secretary and the staff of the Commission.

ARTICLE V

1. Each Contracting Government may set up an Advisory Committee composed of persons, including fishermen, vessel owners and others, well informed concerning the problems of the fisheries of the North-West Atlantic Ocean. With the assent of the Contracting Government concerned, a representative or representatives of an Advisory Committee may attend as observers all non-executive meetings of the Commission or of any Panel in which their Government participates.

2. The Commissioners of each Contracting Government may hold public hearings within the territories they represent.

ARTICLE VI

1. The Commission shall be responsible in the field of scientific investigation for obtaining and collating the information necessary

for maintaining those stocks of fish which support international fisheries in the Convention area and the Commission may, through or in collaboration with agencies of the Contracting Governments or other public or private agencies and organizations or, when necessary, independently—

(a) make such investigations as it finds necessary into the abundance, life history and ecology of any species of aquatic life in any part of the North-West Atlantic Ocean;

(b) collect and analyse statistical information relating to the current conditions and trends of the fishery resources of the Northwest Atlantic Ocean;

(c) study and appraise information concerning the methods for maintaining and increasing stocks of fish in the North-West Atlantic Ocean;

(d) hold or arrange such hearings as may be useful or essential in connection with the development of complete factual information necessary to carry out the provisions of this Convention;

(e) conduct fishing operations in the Convention area at any time for purposes of scientific investigation;

(f) publish and otherwise disseminate reports of its findings and statistical, scientific and other information relating to the fisheries of the North-West Atlantic Ocean as well as such other reports as fall within the scope of this Convention.

2. Upon the unanimous recommendation of each Panel affected, the Commission may alter the boundaries of the sub-areas set out in the Annex. Any such alteration shall forthwith be reported to the Depositary Government, which shall inform the Contracting Government, and the sub-areas defined in the Annex shall be altered accordingly.

3. The Contracting Governments shall furnish to the Commission, at such time and in such form as may be required by the Commission, the statistical information referred to in paragraph 1 (b) of this Article.

ARTICLE VII

1. Each Panel established under Article IV shall be responsible for keeping under review the fisheries of its sub-area and the scientific and other information relating thereto.

2. Each Panel, upon the basis of scientific investigations, may make recommendations to the Commission for joint action by the Contracting Governments on the matters specified in paragraph 1 of Article VIII.

3. Each Panel may recommend to the Commission studies and

investigations within the scope of this Convention which are deemed necessary in the development of factual information relating to its particular sub-area.

4. Any Panel may make recommendations to the Commission for the alteration of the boundaries of the sub-areas defined in the Annex.

5. Each Panel shall investigate and report to the Commission upon any matter referred to it by the Commission.

6. A Panel shall not incur any expenditure except in accordance with directions given by the Commission.

ARTICLE VIII

1. The Commission may, on the recommendations of one or more Panels, and on the basis of scientific investigations, transmit to the Depositary Government proposals for joint action by the Contracting Governments designed to keep the stocks of those species of fish which support international fisheries in the Convention area at a level permitting the maximum sustained catch by the application, with respect to such species of fish, of one or more of the following measures:—

(a) establishing open and closed seasons;

(b) closing to fishing such portions of a sub-area as the Panel concerned finds to be a spawning area or to be populated by small or immature fish;

(c) establishing size limits for any species;

(d) prescribing the fishing gear and appliances the use of which is prohibited;

(e) prescribing an over-all catch limit for any species of fish.

2. Each recommendation shall be studied by the Commission and thereafter the Commission shall either—

(a) transmit the recommendation as a proposal to the Depositary Government with such modifications or suggestions as the Commission may consider desirable, or

(b) refer the recommendation back to the Panel with comments for its reconsideration.

3. The Panel may, after reconsidering the recommendation returned to it by the Commission, reaffirm that recommendation, with or without modification.

4. If, after a recommendation is reaffirmed, the Commission is unable to adopt the recommendation as a proposal, it shall send a copy of the recommendation to the Depositary Government with a report of the Commission's decision. The Depositary Government shall transmit copies of the recommendation and of the Commission's report to the Contracting Governments.

5. The Commission may, after consultation with all the Panels, transmit proposals to the Depositary Government within the scope of paragraph 1 of this Article affecting the Convention area as a whole.

6. The Depositary Government shall transmit any proposal received by it to the Contracting Governments for their consideration and may make such suggestions as will facilitate acceptance of the proposal.

7. The Contracting Governments shall notify the Depositary Governments of their acceptance of the proposal, and the Depositary Government shall notify the Contracting Governments of each acceptance communicated to it, including the date of receipt thereof.

8. The proposal shall become effective for all Contracting Governments four months after the date on which notifications of acceptance shall have been received by the Depositary Government from all the Contracting Governments participating in the Panel or Panels for the sub-area or sub-areas to which the proposal applies.

9. At any time after the expiration of one year from the date on which a proposal becomes effective, any Panel Government for the sub-area to which the proposal applies may give to the Depositary Government notice of the termination of its acceptance of the proposal and, if that notice is not withdrawn, the proposal shall cease to be effective for that Panel Government at the end of one year from the date of receipt of the notice by the Depositary Government. At any time after a proposal has ceased to be effective for a Panel Government under this paragraph, the proposal shall cease to be effective for any other Contracting Government upon the date a notice of withdrawal by such Government is received by the Depositary Government. The Depositary Government shall notify all Contracting Governments of every notice under this paragraph immediately upon the receipt thereof.

ARTICLE IX

The Commission may invite the attention of any or all Contracting Governments to any matters which relate to the objectives and purposes of this Convention.

ARTICLE X

1. The Commission shall seek to establish and maintain working arrangements with other public international organisations which have related objectives, particularly the Food and Agriculture

Organisation of the United Nations and the International Council for the Exploration of the Sea, to ensure effective collaboration and co-ordination with respect to their work and, in the case of the International Council for the Exploration of the Sea, the avoidance of duplication of scientific investigations.

2. The Commission shall consider, at the expiration of two years from the date of entry into force of this Convention, whether or not it should recommend to the Contracting Governments that the Commission be brought within the framework of a specialised agency of the United Nations.

ARTICLE XI

1. Each Contracting Government shall pay the expenses of the Commissioners, experts and advisers appointed by it.

2. The Commission shall prepare an annual administrative budget of the proposed necessary administrative expenditures of the Commission and an annual special projects budget of proposed expenditures on special studies and investigations to be undertaken by or on behalf of the Commission pursuant to Article VI, or by or on behalf of any Panel pursuant to Article VII.

3. The Commission shall calculate the payments due from each Contracting Government under the annual administrative budget according to the following formula:—

(a) from the administrative budget there shall be deducted a sum of 500 United States dollars for each Contracting Government;

(b) the remainder shall be divided into such number of equal shares as corresponds to the total number of Panel memberships;

(c) the payment due from any Contracting Government shall be the equivalent of 500 United States dollars plus the number of shares equal to the number of Panels in which the Government participates.

4. The Commission shall notify each Contracting Government the sum due from that Government as calculated under paragraph 3 of this Article and as soon as possible thereafter each Contracting Government shall pay to the Commission the sum so notified.

5. The annual special projects budget shall be allocated to the Contracting Governments according to a scale to be determined by agreement among the Contracting Governments, and the sums so allocated to any Contracting Government shall be paid to the Commission by that Government.

6. Contributions shall be payable in the currency of the country in which the seat of the Commission is located, except that the

Commission may accept payment in the currencies in which it may be anticipated that expenditures of the Commission will be made from time to time, up to an amount established each year by the Commission in connection with the preparation of the annual budgets.

7. At its first meeting the Commission shall approve an administrative budget for the balance of the first financial year in which the Commission functions and shall transmit to the Contracting Governments copies of that budget together with notices of their respective allocations.

8. In subsequent financial years, the Commission shall submit to each Contracting Government drafts of the annual budgets together with a schedule of allocations, not less than six weeks before the annual meeting of the Commission at which the budgets are to be considered.

ARTICLE XII

The Contracting Governments agree to take such action as may be necessary to make effective the provisions of this Convention and to implement any proposals which become effective under paragraph 8 of Article VIII. Each Contracting Government shall transmit to the Commission a statement of the action taken by it for these purposes.

ARTICLE XIII

The Contracting Governments agree to invite the attention of any Government not a party to this Convention to any matter relating to the fishing activities in the Convention area of the nationals or vessels of that Government which appear to affect adversely the operations of the Commission or the carrying out of the objectives of this Convention.

ARTICLE XIV

The Annex, as attached to this Convention and as modified from time to time, forms an integral part of this Convention.

ARTICLE XV

1. This Convention shall be ratified by the signatory Governments and the instruments of ratification shall be deposited with the Government of the United States of America, referred to in this Convention as the 'Depositary Government.'

2. This Convention shall enter into force upon the deposit of instruments of ratification by four signatory Governments, and shall enter into force with respect to each Government which

subsequently ratifies on the date of the deposit of its instrument of ratification.

3. Any Government which has not signed this Convention may adhere thereto by a notification in writing to the Depositary Government. Adherences received by the Depositary Government prior to the date of entry into force of this Convention shall become effective on the date this Convention enters into force. Adherences received by the Depositary Government after the date of entry into force of this Convention shall become effective on the date of receipt by the Depositary Government.

4. The Depositary Government shall inform all signatory Governments and all adhering Governments of all ratifications deposited and adherences received.

5. The Depositary Government shall inform all Governments concerned of the date this Convention enters into force.

ARTICLE XVI

1. At any time after the expiration of ten years from the date of entry into force of this Convention, any Contracting Government may withdraw from the Convention on December thirty first of any year by giving notice on or before the preceding June thirtieth to the Depositary Government which shall communicate copies of such notice to the other Contracting Governments.

2. Any other Contracting Government may thereupon withdraw from this Convention on the same December thirty-first by giving notice to the Depositary Government within one month of the receipt of a copy of a notice of withdrawal given pursuant to paragraph 1 of this Article.

ARTICLE XVII

1. The original of this Convention shall be deposited with the Government of the United States of America, which Government shall communicate certified copies thereof to all the signatory Governments and all the adhering Governments.

2. The Depositary Government shall register this Convention with the Secretariat of the United Nations.

3. This Convention shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter.

In witness whereof the undersigned, having deposited their respective full powers, have signed this Convention.

Done in Washington this eighth day of February, 1949, in the English language.

[Signatures omitted.]

ANNEX

1. The sub-areas provided for by Article 1 of this Convention shall be as follows:—

Sub-area 1.—That portion of the Convention area which lies to the north and east of a rhumb line from a point in $75^{\circ}00'$ north latitude and $73^{\circ}30'$ west longitude to a point in $69^{\circ}00'$ north latitude and $59^{\circ}00'$ west longitude; east of $59^{\circ}00'$ west longitude; and to the north and east of a rhumb line from a point in $61^{\circ}00'$ north latitude and $59^{\circ}00'$ west longitude to a point in $52^{\circ}15'$ north latitude and $42^{\circ}00'$ west longitude.

Sub-area 2.—That portion of the Convention area lying to the south and west of sub-area 1 defined above and to the north of the parallel of $52^{\circ}15'$ north latitude.

Sub-area 3.—That portion of the Convention area lying south of the parallel of $52^{\circ}15'$ north latitude; and to the east of a line extending due north from Cape Bauld on the north coast of Newfoundland to $52^{\circ}15'$ north latitude; to the north of the parallel of $39^{\circ}00'$ north latitude; and to the east and north of a rhumb line extending in a northwesterly direction which passes through a point in $43^{\circ}30'$ north latitude, $55^{\circ}00'$ west longitude, in the direction of a point in $47^{\circ}50'$ north latitude, $60^{\circ}00'$ west longitude, until it intersects a straight line connecting Cape Ray, on the coast of Newfoundland, with Cape North on Cape Breton Island; thence in a northeasterly direction along said line to Cape Ray.

Sub-area 4.—That portion of the Convention area lying to the west of sub-area 3 defined above, and to the east of a line described as follows: beginning at the terminus of the international boundary between the United States of America and Canada in Grand Manan Channel, at a point in $44^{\circ} 46' 35.34''$ north latitude, $66^{\circ} 54' 11.23''$ west longitude; thence due south to the parallel of $43^{\circ} 50'$ north latitude; thence due west to the meridian of $67^{\circ} 40'$ west longitude; thence due south to the parallel of $42^{\circ} 20'$ north latitude; thence due east to a point in $66^{\circ} 00'$ west longitude; thence along a rhumb line in a southeasterly direction to a point in $42^{\circ} 00'$ north latitude, $65^{\circ} 40'$ west longitude; thence due south to the parallel of $39^{\circ} 00'$ north latitude.

Sub-area 5.—That portion of the Convention area lying west of the western boundary of sub-area 4 defined above.

2. For a period of two years from the date of entry into force of this Convention, Panel representation for each sub-area shall be as follows:—

- (a) *Sub-area 1*—Denmark, France, Italy, Norway, Portugal, Spain, United Kingdom;
- (b) *Sub-area 2*—Denmark, France, Italy, Newfoundland;
- (c) *Sub-area 3*—Canada, Denmark, France, Italy, Newfoundland, Portugal, Spain, United Kingdom;
- (d) *Sub-area 4*—Canada, France, Italy, Newfoundland, Portugal, Spain, United States;
- (e) *Sub-area 5*—Canada, United States;

it being understood that during the period between the signing of this Convention and the date of its entry into force, any signatory or adhering Government may, by notification to the Depositary Government, withdraw from the list of members of a Panel for any sub-area or be added to the list of members of the Panel for any sub-area on which it is not named. The Depositary Government shall inform all the other Governments concerned of all such notifications received and the memberships of the Panels shall be altered accordingly.

C. Mediterranean

1. Agreement for the Establishment of a General Fisheries Council for the Mediterranean (1949)

a. NOTE. There is an earlier conservation organization for this area, the International Commission for the Scientific Exploration of the Mediterranean, which was organized in 1919, and is still in existence. The 1949 Convention, sponsored by the Food and Agriculture Organization of the United Nations, entered into force on 20 February, 1952, after acceptance by Italy, the United Kingdom, Egypt, Yugoslavia, and Israel. Subsequently, Greece, France, Spain, Morocco, Tunisia, and Turkey have deposited acceptances. United Kingdom *Supplementary Lists, supra*, 1947–1955, and *Status Table* of 28 August 1956, which was furnished to the Editor by The Food and Agriculture Organization, the depositary. The text below is taken from the translation appearing in *British Command Paper No. 8508*. The text may also be found in 126 *UNTS* 237.

* * * * *

[Translation]

b. GENERAL FISHERIES COUNCIL FOR THE MEDITERRANEAN AGREEMENT

Rome, 24th September, 1949

PREAMBLE

The Governments of France, Greece, Italy, the Lebanon, Turkey, the United Kingdom and Yugoslavia, Members of the Food and Agriculture Organization of the United Nations, having a mutual

interest in the development and proper utilization of the resources of the Mediterranean and contiguous waters, and desiring to further the attainment of their objectives through international co-operation which would be furthered by the establishment of a General Fisheries Council for the Mediterranean, agree as follows:—

ARTICLE I

THE COUNCIL

1. The contracting Governments agree to establish a Council to be known as the General Fisheries Council for the Mediterranean, hereinafter referred to as the Council, for the purpose of exercising the functions and discharging the responsibilities set forth in Article III below.

2. The Members of the Council shall be the Governments which accept this Agreement in accordance with the provisions of Article VIII below.

ARTICLE II

ORGANIZATION

1. Each Member Government shall be represented at sessions of the Council by one delegate, who may be accompanied by an alternate and by experts and advisers. Participation in meetings of the Council by alternates, experts and advisers shall not entail the right to vote, except in the case of an alternate who is acting in the place of a delegate during his absence.

2. Each Member Government shall have one vote. Decisions of the Council shall be taken by a simple majority of the votes cast, except as otherwise provided by this Agreement. A majority of the total membership of the Council shall constitute a quorum.

3. The Council shall elect a Chairman and two Vice-Chairmen.

4. The Council shall determine the frequency, dates and place of its sessions, form such committees as it deems desirable, and establish rules governing its procedure.

5. The Chairman shall call a session of the Council at least once a year, unless directed otherwise by a majority of the Member Governments. The initial session shall be called by the Food and Agriculture Organizations of the United Nations within six months after the entry into force of this Agreement and at such place as it may designate.

6. The seat of the Council shall be at the seat of the European Regional Office of the Food and Agriculture Organization of the United Nations, now at Rome, Italy.

7. The Food and Agriculture Organization of the United Nations shall provide the Secretariat for the Council.

ARTICLE III FUNCTIONS

The Council shall have the following functions and responsibilities:—

(a) To formulate all oceanographical and technical aspects of the problems of development and proper utilization of aquatic resources;

(b) To encourage and co-ordinate research and the application of improved methods employed in fishery and allied industries with a view to the utilisation of aquatic resources;

(c) To assemble, publish or otherwise disseminate all oceanographical and technical information relating to aquatic resources;

(d) To recommend to Member Governments such national and international research and development projects as may appear necessary or desirable to fill gaps in such knowledge;

(e) To undertake, where appropriate, co-operative research and development projects directed to this end;

(f) To propose, and where necessary to adopt, measures to bring about the standardisation of scientific equipment, techniques and nomenclature;

(g) To make comparative studies of the fishery legislation of different countries with a view to making recommendations to its Member Governments respecting the greatest possible coordination;

(h) To encourage research into the hygiene and prevention of the diseases peculiar to the calling of fishermen;

(i) To extend its good offices in assisting Member Governments to secure essential materials and equipments;

(j) To report upon such questions relating to all oceanographical and technical problems as may be recommended to it by Member Governments or by the Food and Agriculture Organization of the United Nations and, if it thinks proper to do so, by other international, national or private organizations, with related interests;

(k) To report annually upon its activities to Member Governments and to the Conference of the Food and Agriculture Organization of the United Nations; and to make such other reports to the Food and Agriculture Organization of the United Nations on matters falling within the competence of the Council as may seem to it necessary and desirable.

ARTICLE IV

AREA

The Council shall carry out the functions and responsibilities set forth in Article III in the Mediterranean waters as they are geographically described. If, however, the Council contemplates studies outside this area, it shall make the necessary arrangements with the Governments and Organizations concerned, in conformity with paragraph (j) of Article III.

ARTICLE V

CO-OPERATION WITH INTERNATIONAL ORGANIZATIONS

1. The Council shall co-operate closely with other international organizations in matters of mutual interest.

2. The Council shall, if it so deems opportune and useful, entrust to the international bodies referred to above those responsibilities set forth in Article III which are of a scientific nature.

ARTICLE VI

EXPENSES

1. The expenses of delegates and their alternates, experts and advisers occasioned by attendance at meetings of the Council shall be determined and paid by their respective Governments.

2. The expenses of the Secretariat, including publications and communications, and the expenses incurred by the Chairman and Vice-Chairman of the Council, when performing duties on behalf of the Council between Council sessions, shall be determined and paid by the Food and Agriculture Organization of the United Nations within the limits of an annual budget prepared and approved in accordance with the current regulations of that Organization.

3. The expenses of research and development projects undertaken by individual members of the Council, whether independently or upon recommendation of the Council, shall be determined and paid by the Governments concerned.

4. The expenses incurred in connexion with co-operative research or development projects undertaken in accordance with the provisions of Article III, paragraphs (d) and (e), unless otherwise available, shall be determined and paid by the Member Governments in the form and proportion to which they shall mutually agree.

ARTICLE VII

AMENDMENTS

Any amendment of this Agreement shall require the approval

of a two-thirds majority of all the Members of the Council. An exception to this rule is made in the following cases:—

(1) Amendments to the Agreement enlarging the functions of the Council require the approval of the Conference of the Food and Agriculture Organization of the United Nations in addition to approval by a two-thirds majority of all the Members of the Council;

(2) Amendments to the Agreement enlarging the powers of the Council to incur expenses to be borne by the Food and Agriculture Organization of the United Nations, shall require the approval of a two-thirds majority of all the Members of the Council and of the Director-General of the Food and Agriculture Organization of the United Nations.

ARTICLE VIII

ACCEPTANCE

1. This Agreement shall be open to acceptance by Governments which are members of the Food and Agriculture Organization of the United Nations.

2. This Agreement shall also be open to acceptance by Governments which are not members of the Food and Agriculture Organization of the United Nations with the approval of its Conference and of two-thirds of the Members of the Council. Participation by such Governments in the activities of the Council shall be contingent upon the assumption of a proportionate share in the expenses of the Secretariat, as determined by the Council and approved by the Food and Agriculture Organization Conference.

3. The notifications of acceptance of this Agreement shall be deposited with the Director-General of the Food and Agriculture Organization of the United Nations, who shall immediately inform all the Governments concerned of their receipt.

ARTICLE IX

ENTRY INTO FORCE

1. This Agreement shall enter into force as from the date of receipt of the fifth notification of acceptance.

2. Notifications of acceptance received after the entry into force of this Agreement shall take effect on the date of their receipt by the Director-General of the Food and Agriculture Organization of the United Nations, who shall immediately inform all the Governments concerned and the Council of their receipt.

ARTICLE X WITHDRAWAL

Any Member Government may denounce this Agreement after the expiration of two years from the date upon which the Agreement entered into force with respect to that Government by giving written notice of its withdrawal to the Director-General of the Food and Agriculture Organization of the United Nations, who shall immediately inform all the Governments concerned and the Council of such withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Director-General.

Drafted at Rome this twenty-fourth day of September one thousand nine hundred and forty-nine, in the French language, in a single copy which shall be deposited in the archives of the Food and Agriculture Organization of the United Nations, which shall furnish certified copies thereof to the Member Governments of the Food and Agriculture Organization of the United Nations.

D. Indo-Pacific

1. Agreement for the Establishment of an Indo-Pacific Fisheries Council (1948)

a. NOTE. The Agreement for this Council, also sponsored by the Food and Agriculture Organization of the United Nations, entered into force on 9 November 1948, after acceptances by France, the Philippines, the United States, Thailand, and India. Subsequently, the Netherlands, Burma, China, Ceylon, the United Kingdom, Australia, Pakistan, Korea, Indonesia, Cambodia, Viet-Nam, and Japan have become parties as of October 31, 1955. China withdrew from the Food and Agriculture Organization on 20 July 1951, and does not participate in the Council. *Treaties in Force*, page 160. A Status Table as of 28 August 1956, furnished to the Editor by the F.A.O., does not list China as a member of the Council. The text may be found in 62 Stat. (3) 3711; *TIAS* 1895; 120 *UNTS* 59; and British Command Paper No. 7845. The text below is taken from the *Revised Edition*, January 1954, published by the Food and Agriculture Organization. A Revision of the Agreement, prepared at the Sixth Session of the Council, entered into force 31 October 1955 (*TIAS* 3674).

* * * * *

b. AGREEMENT FOR THE ESTABLISHMENT OF THE INDO-PACIFIC FISHERIES COUNCIL (1948)

PREAMBLE

The Governments of Burma, China, India, the Netherlands, the Republic of the Philippines, the United Kingdom and the United

States of America, members of the Food and Agriculture Organization of the United Nations, having a mutual interest in the development and proper utilization of the living aquatic resources of the Indo-Pacific Areas, and desiring to further the attainment of these ends through international cooperation by the establishment of an Indo-Pacific Fisheries Council agree as follows:

ARTICLE I THE COUNCIL

1. The contracting Governments agree to establish a Council, to be known as the Indo-Pacific Fisheries Council, for the purpose of carrying out the functions and duties hereinafter set forth in Article III.

2. The members of the Council shall be the Governments which accept this Agreement in accordance with the provisions of Article IX thereof.

ARTICLE II ORGANIZATION

1. Each Member Government shall be represented at meetings of the Council by a single delegate, who may be accompanied by an alternate and by experts and advisers. Participation in meetings of the Council by alternates, experts and advisers shall not entail the right to vote, except in the case of an alternate who is acting in the place of a delegate during his absence.

2. Each Member Government shall have one vote. Decisions of the Council shall be taken by a single majority of the votes cast, except as otherwise provided by this Agreement. A majority of the total membership of the Council shall constitute a quorum.

3. The Council shall elect a Chairman and a Vice-Chairman who with the immediately retiring Chairman shall constitute the Executive Committee.

4. The Council shall determine the frequency, dates and places of its meetings, and establish rules governing its procedure.

5. The Chairman shall call a meeting of the Council at least once in every year, unless directed otherwise by a majority of the member Governments. The initial meeting shall be called by the Food and Agriculture Organization of the United Nations within six months after the entry into force of this Agreement and at such place as it may designate.

6. The seat of the Council shall be at the seat of the Regional Office of the Food and Agriculture Organization of the United Nations most conveniently situated within the area defined in

Article IV. Pending the establishment of such a Regional Office, the Council shall select a temporary seat within that area.

7. The Food and Agriculture Organization of the United Nations shall provide the Secretariat for the Council and shall appoint its Secretary.

ARTICLE III

FUNCTIONS

The Council shall have the following functions and duties:—

(a) To formulate the oceanographical, biological and other technical aspects of the problems of development and proper utilization of living aquatic resources;

(b) To encourage and coordinate research and the application of improved methods in every day practice;

(c) To assemble, publish or otherwise disseminate oceanographical, biological and other technical information relating to living aquatic resources;

(d) To recommend to member Governments such national or co-operative research and development projects as may appear necessary or desirable to fill gaps in such knowledge;

(e) To undertake, where appropriate, co-operative research and development projects directed to this end;

(f) To propose, and where necessary to adopt, measures to bring about the standardization of scientific equipment, techniques and nomenclature;

(g) To extend its good offices in assisting Member Governments to secure essential material and equipment;

(h) To report upon such questions relating to oceanographical, biological and other technical problems as may be recommended to it by Member Governments or by the Food and Agriculture Organization of the United Nations and other international, national or private organizations with related interests;

(i) To report annually to the Conference of the Food and Agriculture Organization of the United Nations upon its activities for the information of the Conference; and to make such other reports to the Food and Agriculture Organization of the United Nations on matters falling within the competence of the Council as may seem to it necessary and desirable.

ARTICLE IV

AREA

The Council shall carry out the functions and duties set forth in Article III in the Indo-Pacific area.

ARTICLE V .

Co-OPERATION WITH INTERNATIONAL BODIES

The Council shall co-operate closely with other international bodies in matters of mutual interest.

ARTICLE VI

EXPENSES

1. The expenses of delegates and their alternates, experts and advisers occasioned by attendance at meetings of the Council shall be determined and paid by their respective Governments.

2. The expenses of the Secretariat, including publications and communications, and of the Chairman, Vice-Chairman and the immediately retired Chairman of the Council, when performing duties connected with its work during intervals between its meetings, shall be determined and paid by the Food and Agriculture Organization of the United Nations within the limits of an annual budget prepared and approved in accordance with the current regulations of that Organization.

3. The expenses of research or development projects undertaken by individual members of the Council, whether independently or upon the recommendation of the Council, shall be determined and paid by their respective Governments.

4. The expenses incurred in connection with co-operative research or development projects undertaken in accordance with the provisions of Article III, paragraphs (d) and (e) unless otherwise available shall be determined and paid by the Member Governments in the form and proportion to which they shall mutually agree.

ARTICLE VII

AMENDMENTS

Any proposal for amending this Agreement shall require the approval of a two-thirds majority of all the Members of the Council. An exception to this rule is made in the following cases:

(1) Amendments to the Agreement extending the functions of the Council require the approval of the Conference of the Food and Agriculture Organization of the United Nations in addition to approval of a two-thirds majority of all the Members of the Council;

(2) Amendments of the Agreement extending the powers of the Council to incur expenses to be borne by the Food and Agriculture Organization of the United Nations, shall require the approval by a two-thirds majority of all the Members of the

Council and of the Director-General of the Food and Agriculture Organization of the United Nations.

ARTICLE VIII

ACCEPTANCE

1. This Agreement shall be open to acceptance by Governments which are members of the Food and Agriculture Organization of the United Nations.

2. This Agreement shall also be open to acceptance by Governments which are not members of the Food and Agriculture Organization of the United Nations, with the approval of the Conference of the Food and Agriculture Organization of the United Nations and of two-thirds of the members of the Council. Participation by such Governments in the activities of the Council shall be contingent upon the assumption of a proportionate share in the expenses of the Secretariat, as determined by the Council and approved by the Food and Agriculture Organization Conference.

3. The notifications of acceptance of this Agreement shall be deposited with the Director-General of the Food and Agriculture Organization of the United Nations, who shall immediately inform all the Governments concerned of their receipt.

ARTICLE IX

ENTRY INTO FORCE

1. This Agreement shall enter into force upon the date of receipt of the fifth notification of acceptance.

2. Notifications of acceptance received after the entry into force of this Agreement shall take effect on the date of their receipt by the Director-General of the Food and Agriculture Organization of the United Nations who shall immediately inform all the Governments concerned and the Council of their receipt.

ARTICLE X

WITHDRAWAL

Any Member Government may withdraw from this Agreement, at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Government by giving written notice of such withdrawal to the Director-General of the Food and Agriculture Organization of the United Nations who shall immediately inform all the Governments concerned and the Council of such withdrawal. Notice of withdrawal shall become effective three months from the date of their receipt by the Director-General.

Formulated at Baguio this 26th day of February, one thousand nine hundred and forty-eight, in the English language, in a single copy which shall be deposited in the archives of the Food and Agriculture Organization of the United Nations which shall furnish certified copies thereof to the Governments members of the Food and Agriculture Organization of the United Nations.

E. North Pacific

1. Fur Seals. Note on Agreements

A Convention for the protection of fur seals between Canada, Japan, Russia, and the United States became effective on 15 December 1911. III *Redmond* 2966; 37 Stat. 1542. On October 23, 1940, Japan denounced the Convention which denunciation, under Article XVI thereof, became effective twelve months later. 3 *Department of State Bulletin* 412 (July–December 1940). In 1942, the United States and Canada entered into a similar agreement between themselves, effective 30 May 1944 but operative from 1 June 1942. *Treaties in Force*, Page 25. The text of this Provisional Fur Seal Agreement is printed in *U. N. Leg. Series I* (1951) at page 222. The national legislation of Canada and the United States giving effect to this Agreement is printed, *Ibid.*, at pages 224 and 227, respectively. The Agreement may be found also in 58 Stat. 1379, and 26 *UNTS* 363. This Agreement was extended by an Exchange of Notes on 26 December 1947. 62 Stat. (2) 1821, and 27 *UNTS* 29.

An Agreement relating to programs of research concerning fur seals of the North Pacific Ocean, to which the U.S.S.R. was invited to become a party, entered into force for Japan and the United States on 8 February 1952, and for Canada on 1 March 1952. The texts of the Exchanges of Notes consummating the Agreement may be found in 3 *U.S.T.* (3) 3896; and *TIAS* 2521. An Interim Convention on conservation of North Pacific fur seals was signed at Washington 9 February 1957 by Canada, Japan, the U.S.S.R., and the United States. As of August 1957, it had not entered into force. The text of the Interim Convention appears in the *Bulletin* of the Department of State, 4 March 1957, page 377 *et seq.* As of October 1957, the United States and Canada have deposited their ratifications.

2. Sockeye Salmon. Note on Agreements

The United States and Canada signed at Washington 26 May 1930 the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Frazer River System. The Convention entered into force on 28 July 1937. 50 Stat. 1355; IV *Trenwith* 4002. The text of the Convention has also been reprinted in *U. N. Leg. Series I*, (1951), page 195. The ratification of the United States was subject to "understandings". IV *Trenwith* 4007; *U. N. Leg. Series I*, (1951), page 199. The national legislation of Canada and the United States giving effect to the Convention is printed, *Ibid.*, at pages 200 and 201, respectively. A supplementary Agreement relating to the ascent of salmon in the Frazer River System entered into force on 5 August 1944 through an Exchange of Notes. 59 Stat. 1614; 121 *UNTS* 299. Negotiations are scheduled in the fall of 1956 for a similar convention with respect to pink salmon, not now covered by any fishery agreement. *The New York Times*, 5 August 1956, page 22, column 1. It has been reported that fishing by mile-long nets outside territorial waters of both

countries and outside the jurisdiction of the Commission is threatening the supply and the usefulness of the Convention. *The New York Times*, 7 October 1956, Section 1, page 6, cols. 1-4. A Protocol, placing pink salmon of the Frazer River System under the Sockeye Salmon Convention of 1930, was signed at Ottawa 28 December 1956. The Protocol entered into force 3 July 1957. The text of the Protocol appears in the *Bulletin* of the Department of State, 14 January 1957, page 76 *et seq.*, and in *T.I.A.S.* 3867.

3. International Convention for the High Seas Fisheries of the North Pacific Ocean (1952) with Annex and Protocol

a. NOTE. This Convention, between the United States, Canada and Japan, entered into force 12 June 1953. It was signed at Tokyo 9 May 1952; ratification advised by the Senate 4 July 1952; ratified by the President 30 July 1952; ratified by Canada and Japan 15 May and 9 June 1953, respectively; ratifications exchanged at Tokyo 12 June 1953; and proclaimed by the President 30 July 1953. See Allen, *A New Concept for Fishery Treaties*, 46 *A.J.I.L.* 319 (1952); Selak, *The Proposed International Convention for the High Seas Fisheries of the North Pacific Ocean*, 46 *Ibid.* 323 (1952); and Bishop, *The Need for a Japanese Fisheries Agreement*, 45 *Ibid.* 712 (1951). The text may be found in 4 *U.S.T.* 380 and *TIAS* 2786, the latter being used for the reprinting herein. The text may also be found in 48 *A.J.I.L., Supp.*, 1954, pages 71-81.

* * * * *

b. INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN (1952)

The Governments of the United States of America, Canada and Japan, whose respective duly accredited representatives have subscribed hereto,

Acting as sovereign nations in the light of their rights under the principles of international law and custom to exploit the fishery resources of the high seas, and

Believing that it will best serve the common interest of mankind, as well as the interests of the Contracting Parties, to ensure the maximum sustained productivity of the fishery resources of the North Pacific Ocean, and that each of the Parties should assume an obligation, on a free and equal footing, to encourage the conservation of such resources, and

Recognizing that in view of these considerations it is highly desirable (1) to establish an International Commission, representing the three Parties hereto, to promote and coordinate the scientific studies necessary to ascertain the conservation measures required to secure the maximum sustained productivity of fisheries of joint interest to the Contracting Parties and to recommend such measures to such Parties and (2) that each Party carry out such conservation recommendations, and provide for necessary restraints on its own nationals and fishing vessels,

Therefore agree as follows:

ARTICLE I

1. The area to which this Convention applies, hereinafter referred to as "the Convention area", shall be all waters, other than territorial waters, of the North Pacific Ocean which for the purposes hereof shall include the adjacent seas.

2. Nothing in this Convention shall be deemed to affect adversely (prejudice) the claims of any Contracting Party in regard to the limits of territorial waters or to the jurisdiction of a coastal state over fisheries.

3. For the purposes of this Convention the term "fishing vessel" shall mean any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

ARTICLE II

1. In order to realize the objectives of this Convention, the Contracting Parties shall establish and maintain the International North Pacific Fisheries Commission, hereinafter referred to as "the Commission."

2. The Commission shall be composed of three national sections, each consisting of not more than four members appointed by the governments of the respective Contracting Parties.

3. Each national section shall have one vote. All resolutions, recommendations and other decisions of the Commission shall be made only by a unanimous vote of the three national sections except when under the provisions of Article III, Section 1 (c) (ii) only two participate.

4. The Commission may decide upon and amend, as occasion may require, by-laws or rules for the conduct of its meetings.

5. The Commission shall meet at least once each year and at such other times as may be requested by a majority of the national sections. The date and place of the first meeting shall be determined by agreement between the Contracting Parties.

6. At its first meeting the Commission shall select a Chairman, Vice-Chairman and Secretary from different national sections. The Chairman, Vice-Chairman and Secretary shall hold office for a period of one year. During succeeding years selection of a Chairman, Vice-Chairman and Secretary from the national sections shall be made in such a manner as will provide each Contracting Party in turn with representation in those offices.

7. The Commission shall decide on a convenient place for the establishment of the Commission's headquarters.

8. Each Contracting Party may establish an Advisory Committee for its national section, to be composed of persons who

shall be well informed concerning North Pacific fishery problems of common concern. Each such Advisory Committee shall be invited to attend all sessions of the Commission except those which the Commission decided to be *in camera*.

9. The Commission may hold public hearings. Each national section may also hold public hearings within its own country.

10. The official languages of the Commission shall be Japanese and English. Proposals and data may be submitted to the Commission in either language.

11. Each Contracting Party shall determine and pay the expenses incurred by its national section. Joint expenses incurred by the Commission shall be paid by the Commission through contributions made by the Contracting Parties in the form and proportion recommended by the Commission and approved by the Contracting Parties.

12. An annual budget of joint expenses shall be recommended by the Commission and submitted to the Contracting Parties for approval.

13. The Commission shall authorize the disbursement of funds for the joint expenses of the Commission and may employ personnel and acquire facilities necessary for the performance of its functions.

ARTICLE III

1. The Commission shall perform the following functions:

(a) In regard to any stock of fish specified in the Annex, study for the purpose of determining annually whether such stock continues to qualify for abstention under the provisions of Article IV. If the Commission determines that such stock no longer meets the conditions of Article IV, the Commission shall recommend that it be removed from the Annex. Provided, however, that with respect to the stocks of fish originally specified in the Annex, no determination or recommendation as to whether such stock continues to qualify for abstention shall be made for five years after the entry into force of this Convention.

(b) To permit later additions to the Annex, study, on request of a Contracting Party, any stock of fish of the Convention area, the greater part of which is harvested by one or more of the Contracting Parties, for the purpose of determining whether such stock qualifies for abstention under the provisions of Article IV. If the Commission decides that the particular stock fulfills the conditions of Article IV it shall recommend (1) that such stock be added to the Annex, (2) that the appropriate Party or Parties abstain from fishing such stock and (3) that the Party or Parties

participating in the fishing of such stock continue to carry out necessary conservation measures.

(c) In regard to any stock of fish in the Convention area;

(i) Study, on request of any Contracting Party concerned, any stock of fish which is under substantial exploitation by two or more of the Contracting Parties, and which is not covered by a conservation agreement between such Parties existing at the time of the conclusion of this Convention, for the purpose of determining need for joint conservation measures;

(ii) Decide and recommend necessary joint conservation measures including any relaxation thereof to be taken as a result of such study. Provided, however, that only the national sections of the Contracting Parties engaged in substantial exploitation of such stock of fish may participate in such decision and recommendation. The decisions and recommendations shall be reported regularly to all the Contracting Parties, but shall apply only to the Contracting Parties the national sections of which participated in the decisions and recommendations.

(iii) Request the Contracting Party or Parties concerned to report regularly the conservation measures adopted from time to time with regard to the stocks of fish specified in the Annex, whether or not covered by conservation agreements between the Contracting Parties, and transmit such information to the other Contracting Party or Parties.

(d) Consider and make recommendations to the Contracting Parties concerning the enactment of schedules of equivalent penalties for violations of this Convention.

(e) Compile and study the records provided by the Contracting Parties pursuant to Article VIII.

(f) Submit annually to each Contracting Party a report on the Commission's operations, investigations and findings, with appropriate recommendations, and inform each Contracting Party, whenever it is deemed advisable, on any matter relating to the objectives of this Convention.

2. The Commission may take such steps, in agreement with the Parties concerned, as will enable it to determine the extent to which the undertakings agreed to by the Parties under the provisions of Article V, Section 2, and the measures recommended by the Commission under the provisions of this Article and accepted by the Parties concerned have been effective.

3. In the performance of its functions, the Commission shall, insofar as feasible, utilize the technical and scientific services of, and information from, official agencies of the Contracting Parties and their political sub-divisions and may, when desirable and if

available, utilize the services of, and information from, any public or private institution or organization or any private individual.

ARTICLE IV

1. In making its recommendations the Commission shall be guided by the spirit and intent of this Convention and by the considerations below mentioned.

(a) Any conservation measures for any stock of fish decided upon under the provisions of this Convention shall be recommended for equal application to all Parties engaged in substantial exploitation of such stock.

(b) With regard to any stock of fish which the Commission determines reasonably satisfies all the following conditions, a recommendation shall be made as provided for in Article III, Section 1, (b).

(i) Evidence based upon scientific research indicates that more intensive exploitation of the stock will not provide a substantial increase in yield which can be sustained year after year,

(ii) The exploitation of the stock is limited or otherwise regulated through legal measures by each Party which is substantially engaged in its exploitation, for the purpose of maintaining or increasing its maximum sustained productivity; such limitations and regulations being in accordance with conservation programs based upon scientific research, and

(iii) The stock is the subject of extensive scientific study designed to discover whether the stock is being fully utilized and the conditions necessary for maintaining its maximum sustained productivity.

Provided, however, that no recommendation shall be made for abstention by a Contracting Party concerned with regard to: (1) any stock of fish which at any time during the twenty-five years next preceding the entry into force of this Convention has been under substantial exploitation by that Party having regard to the conditions referred to in Section 2 of this Article; (2) any stock of fish which is harvested in greater part by a country or countries not party to this Convention; (3) waters in which there is historic intermingling of fishing operations of the Parties concerned, intermingling of the stocks of fish exploited by these operations, and a long-established history of joint conservation and regulation among the Parties concerned so that there is consequent impracticability of segregating the operations and administering control. It is recognized that the conditions specified in subdivision (3) of this proviso apply to Canada and the United

States of America in the waters off the Pacific Coasts of the United States of America and Canada from and including the waters of the Gulf of Alaska southward and, therefore, no recommendation shall be made for abstention by either the United States of America or Canada in such waters.

2. In any decision or recommendation allowances shall be made for the effect of strikes, wars, or exceptional economic or biological conditions which may have introduced temporary declines in or suspension of productivity, exploitation, or management of the stock of fish concerned.

ARTICLE V

1. The Annex attached hereto forms an integral part of this Convention. All references to "Convention" shall be understood as including the said Annex either in its present terms or as amended in accordance with the provisions of Article VII.

2. The Contracting Parties recognize that any stock of fish originally specified in the Annex to this Convention fulfills the conditions prescribed in Article IV and accordingly agree that the appropriate Party or Parties shall abstain from fishing such stock and the Party or Parties participating in the fishing of such stock shall continue to carry out necessary conservation measures.

ARTICLE VI

In the event that it shall come to the attention of any of the Contracting Parties that the nationals or fishing vessels of any country which is not a Party to this Convention appear to affect adversely the operations of the Commission or the carrying out of the objectives of this Convention, such Party shall call the matter to the attention of other Contracting Parties. All the Contracting Parties agree upon the request of such Party to confer upon the steps to be taken towards obviating such adverse effects or relieving any Contracting Party from such adverse effects.

ARTICLE VII

1. The Annex to this Convention shall be considered amended from the date upon which the Commission receives notification from all the Contracting Parties of acceptance of a recommendation to amend the Annex made by the Commission in accordance with the provisions of Article III, Section I, or of the Protocol to this Convention.

2. The Commission shall notify all the Contracting Parties of the date of receipt of each notification of acceptance of an amendment to the Annex.

ARTICLE VIII

The Contracting Parties agree to keep as far as practicable all records requested by the Commission and to furnish compilations of such records and other information upon request of the Commission. No Contracting Party shall be required hereunder to provide the records of individual operations.

ARTICLE IX

1. The Contracting Parties agree as follows:

(a) With regard to a stock of fish from the exploitation of which any Contracting Party has agreed to abstain, the nationals and fishing vessels of such Contracting Party are prohibited from engaging in the exploitation of such stock of fish in waters specified in the Annex, and from loading, processing, possessing, or transporting such fish in such waters.

(b) With regard to a stock of fish for which a Contracting Party has agreed to continue to carry out conservation measures, the nationals and fishing vessels of such Party are prohibited from engaging in fishing activities in waters specified in the Annex in violation of regulations established under such conservation measures.

2. Each Contracting Party agrees, for the purpose of rendering effective the provisions of this Convention, to enact and enforce necessary laws and regulations, with regard to its nationals and fishing vessels, with appropriate penalties against violations thereof and to transmit to the Commission a report on any action taken by it with regard thereto.

ARTICLE X

1. The Contracting Parties agree, in order to carry out faithfully the provisions of this Convention, to cooperate with each other in taking appropriate and effective measures and accordingly agree as follows:

(a) When a fishing vessel of a Contracting Party has been found in waters in which that Party had agreed to abstain from exploitation in accordance with the provisions of this Convention, the duly authorized officials of any Contracting Party may board such vessel to inspect its equipment, books, documents, and other articles, and question the persons on board.

Such officials shall present credentials issued by their respective Governments if requested by the master of the vessel.

(b) When any such person or fishing vessel is actually engaged in operations in violation of the provisions of this Convention, or there is reasonable ground to believe was obviously so

engaged immediately prior to boarding of such vessel by any such official, the latter may arrest or seize such person or vessel. In that case, the Contracting Party to which the official belongs shall notify the Contracting Party to which such person or vessel belongs of such arrest or seizure, and shall deliver such vessel or persons as promptly as practicable to the authorized officials of the Contracting Party to which such vessel or person belongs at a place to be agreed upon by both Parties. Provided, however, that when the Contracting Party which receives such notification cannot immediately accept delivery and makes request, the Contracting Party which gives such notification may keep such person or vessel under surveillance within its own territory, under the conditions agreed upon by both of the Contracting Parties.

(c) Only the authorities of the Party to which the above-mentioned person or fishing vessel belongs may try the offense and impose penalties therefor. The witnesses and evidence necessary for establishing the offense, so far as they are under the control of any of the Parties to this Convention, shall be furnished as promptly as possible to the Contracting Party having jurisdiction to try the offense.

2. With regard to the nationals or fishing vessels of one or more Contracting Parties in waters with respect to which they have agreed to continue to carry out conservation measures for certain stocks of fish in accordance with the provisions of this Convention, the Contracting Parties concerned shall carry out enforcement severally or jointly. In that case, the Contracting Parties concerned agree to report periodically through the Commission to the Contracting Party which has agreed to abstain from the exploitation of such stocks of fish on the enforcement conditions, and also, if requested, to provide opportunity for observation of the conduct of enforcement.

3. The Contracting Parties agree to meet, during the sixth year of the operation of this Convention, to review the effectiveness of the enforcement provisions of this Article and, if desirable, to consider means by which they may more effectively be carried out.

ARTICLE XI

1. This Convention shall be ratified by the Contracting Parties in accordance with their respective constitutional processes and the instruments of ratification shall be exchanged as soon as possible at Tokyo.

2. This Convention shall enter into force on the date of the exchange of ratifications. It shall continue in force for a period of

ten years and thereafter until one year from the day on which a Contracting Party shall give notice to the other Contracting Parties of an intention of terminating the Convention, whereupon it shall terminate as to all Contracting Parties.

IN WITNESS WHEREOF, the respective Plenipotentiaries, duly authorized, have signed the present Convention.

DONE in triplicate, in the English and Japanese languages, both equally authentic, at Tokyo this ninth day of May, one thousand nine hundred fifty-two.

[Signatures omitted.]

ANNEX

1. With regard to the stocks of fish in the respective waters named below, Japan agrees to abstain from fishing, and Canada and the United States of America agree to continue to carry out necessary conservation measures, in accordance with the provisions of Article V, Section 2 of this Convention:

(a) Halibut (*Hippoglossus stenolepis*)

The Convention area off the coasts of Canada and the United States of America in which commercial fishing for halibut is being or can be prosecuted. Halibut referred to herein shall be those originating along the coast of North America.

(b) Herring (*Clupea pallasii*)

The Convention area off the coasts of Canada and the United States of America, exclusive of the Bering Sea and of the waters of the North Pacific Ocean west of the meridian passing through the extremity of the Alaskan Peninsula, in which commercial fishing for herring of North America origin is being or can be prosecuted.

(c) Salmon (*Oncorhynchus gorbuscha*, *Oncorhynchus keta*, *Oncorhynchus kisutch*, *Oncorhynchus nerka*, *Oncorhynchus tshawytscha*)

The Convention area off the coasts of Canada and the United States of America, exclusive of the Bering Sea and of the waters of the North Pacific Ocean west of a provisional line following the meridian passing through the western extremity of Atka Island; in which commercial fishing for salmon originating in the rivers of Canada and the United States of America is being or can be prosecuted.

2. With regard to the stocks of fish in the waters named below,

Canada and Japan agree to abstain from fishing, and the United States of America agrees to continue to carry out necessary conservation measures, in accordance with the provisions of Article V, Section 2 of this Convention:

Salmon (*Oncorhynchus gorbusha*, *Oncorhynchus keta*, *Oncorhynchus kisutch*, *Oncorhynchus nerka* and *Oncorhynchus tshawytscha*)

The Convention area of the Bering Sea east of the line starting from Cape Prince of Wales on the west coast of Alaska, running westward to 168° 58'22.59" West Longitude; thence due south to a point 65° 15'00" North Latitude; thence along the great circle course which passes through 51° North Latitude and 167° East Longitude, to its intersection with meridian 175° West Longitude; thence south along a provisional line which follows this meridian to the territorial waters limit of Atka Island; in which commercial fishing for salmon originating in the rivers of the United States of America is being or can be prosecuted.

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN

The Governments of the United States of America, Canada and Japan, through their respective Plenipotentiaries, agree upon the following stipulation in regard to the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo on this ninth day of May, nineteen hundred fifty-two.

The Governments of the United States of America, Canada and Japan agree that the line of meridian 175° West Longitude and the line following the meridian passing through the western extremity of Atka Island, which have been adopted for determining the areas in which the exploitation of salmon is abstained or the conservation measures for salmon continue to be enforced in accordance with the provisions of the Annex to this Convention, shall be considered as provisional lines which shall continue in effect subject to confirmation or readjustment in accordance with the procedure mentioned below.

The Commission to be established under the Convention shall, as expeditiously as practicable, investigate the waters of the Convention area to determine if there are areas in which salmon originating in the rivers of Canada and of the United States of America intermingle with salmon originating in the rivers of Asia. If such areas are found the Commission shall conduct suitable

studies to determine a line or lines which best divide salmon of Asiatic origin and salmon of Canadian and United States of America origin, from which certain Contracting Parties have agreed to abstain in accordance with the provisions of Article V, Section 2, and whether it can be shown beyond a reasonable doubt that this line or lines more equitably divide such salmon than the provisional lines specified in sections 1(c) and 2 of the Annex. In accordance with these determinations the Commission shall recommend that such provisional lines be confirmed or that they be changed in accordance with these results, giving due consideration to adjustments required to simplify administration.

In the event, however, the Commission fails within a reasonable period of time to recommend unanimously such line or lines, it is agreed that the matter shall be referred to a special committee of scientists consisting of three competent and disinterested persons, no one of whom shall be a national of a Contracting Party, selected by mutual agreement of all Parties for the determination of this matter.

It is further agreed that when a determination has been made by a majority of such special committee, the Commission shall make a recommendation in accordance therewith.

The Governments of the United States of America, Canada and Japan, in signing this Protocol, desire to make it clear that the procedure set forth herein is designed to cover a special situation. It is not, therefore, to be considered a precedent for the final resolution of any matters which may, in the future, come before the Commission.

This Protocol shall become effective from the date of entry into force of the said Convention.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol.

DONE in triplicate at Tokyo this ninth day of May, one thousand nine hundred fifty-two.

[Signatures omitted.]

4. Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (1953)

a. NOTE. This Convention, between the United States and Canada, entered into force 28 October 1953. It was signed at Ottawa 2 March 1953; ratification advised by the Senate 27 July 1953; ratified by the President 18 August 1953; ratified by Canada 14 October 1953; ratifications exchanged at Washington 28 October 1953; and proclaimed by the President 7 January 1954. The text may be found in 5 *UST* 5, and *TIAS* 2900, the latter being used for the reprinting herein.

This Convention replaced the Convention for the Preservation of Halibut.

Industry, 29 January 1937, 50 Stat. 1351 and IV *Trenwith* 4014. The 1937 Convention was reprinted in *U.N. Leg. Series I* (1951), page 205. The national legislation of Canada and the United States giving effect to that Convention are printed, *Ibid.*, at pages 207 and 210, respectively. The 1937 Convention was a continuation of earlier Conventions concluded on 2 March 1923 and 9 May 1930, to be found at 43 Stat. 1841; IV *Trenwith* 3982; and 47 Stat. 1872; IV *Trenwith* 3999, respectively. The 1923 Convention is also printed in U.S. Naval War College, *International Law Documents, 1924* (1926), at page 84. These two Conventions constituted a pioneer effort in international research and regulation of a fishery. A Convention extending port privileges to halibut fishing vessels on the Pacific Coasts of the two countries entered into force on 13 July 1950. I *UST*. 536; *TIAS* 2096.

* * * * *

b. CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CANADA FOR THE PRESERVATION OF THE HALIBUT FISHERY OF THE NORTHERN PACIFIC OCEAN AND BERING SEA (1953)

The Government of the United States of America and the Government of Canada, desiring to provide more effectively for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea, have resolved to conclude a Convention replacing the Convention signed at Ottawa, January 29, 1937 and have named as their plenipotentiaries:

[Names omitted.]

who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I

1. The nationals and inhabitants and fishing vessels and boats of the United States of America and Canada, respectively, are hereby prohibited from fishing for halibut (*Hippoglossus*) in Convention waters as herein defined, except as provided by the International Pacific Halibut Commission in regulations designed to develop the stocks of halibut in the Convention waters to those levels which will permit the maximum sustained yield and to maintain the stocks at those levels pursuant to Article III of this Convention.

2. "Convention waters" means the territorial waters and the high seas off the western coasts of the United States of America and of Canada, including the southern as well as the western coasts of Alaska.

3. It is understood that nothing contained in this Convention shall prohibit the nationals or inhabitants or the fishing vessels or boats of the United States of America or of Canada from fishing in the Convention waters for other species of fish during any

season when fishing for halibut in the Convention waters is prohibited by this Convention or any regulations adopted pursuant to this Convention. It is further understood that nothing contained in this Convention shall prohibit the International Pacific Halibut Commission from conducting or authorizing fishing operations for investigation purposes at any time.

ARTICLE II

1. Every national or inhabitant, vessel or boat of the United States of America or of Canada engaged in fishing on the high seas in violation of this Convention or of any regulation adopted pursuant thereto may be seized by duly authorized officers of either Contracting Party and detained by the officers making such seizure and delivered as soon as practicable to an authorized official of the country to which such person, vessel or boat belongs, at the nearest point to the place of seizure or elsewhere as may be agreed upon. The authorities of the country to which such person, vessel or boat belongs alone shall have jurisdiction to conduct prosecutions for the violation of the provisions of this Convention or any regulations which may be adopted in pursuance thereof and to impose penalties for such violation, and the witnesses and proof necessary for such prosecutions, so far as any witnesses or proofs are under the control of the other Contracting Party, shall be furnished with all reasonable promptitude to the authorities having jurisdiction to conduct the prosecutions.

2. Each Contracting Party shall be responsible for the proper observance of this Convention and of any regulations adopted under the provisions thereof in the portion of its waters covered thereby.

ARTICLE III

1. The Contracting Parties agree to continue under this Convention the Commission known as the International Fisheries Commission established by the Convention for the Preservation of the Halibut Fishery, signed at Washington, March 2, 1923, continued by the Convention signed at Ottawa, May 9, 1930, and further continued by the Convention, signed at Ottawa, January 29, 1937, except that after the date of entry into force of this Convention it shall consist of six members, three appointed by each Contracting Party, and shall be known as the International Pacific Halibut Commission. This Commission shall make investigations as are necessary into the life history of the halibut in the Convention waters and shall publish a report of its activities and investigations from time to time. Each Contracting

Party shall have power to fill, and shall fill from time to time, vacancies which may occur in its representation on the Commission. Each Contracting Party shall pay the salaries and expenses of its own members. Joint expenses incurred by the Commission shall be paid by the two Contracting Parties in equal moieties. All decisions of the Commission shall be made by a concurring vote of at least two of the Commissioners of each Contracting Party.

2. The Contracting Parties agree that for the purpose of developing the stocks of halibut of the Northern Pacific Ocean and Bering Sea to levels which will permit the maximum sustained yield from that fishery and for maintaining the stocks at those levels, the International Pacific Halibut Commission, with the approval of the President of the United States of America and of the Governor General in Council of Canada, may, after investigation has indicated such action to be necessary, in respect of the nationals and inhabitants and fishing vessels and boats of the United States of America and of Canada, and in respect of halibut:

- (a) divide the Convention waters into areas;
- (b) establish one or more open or closed seasons, as to each area;
- (c) limit the size of the fish and the quantity of the catch to be taken from each area within any season during which fishing is allowed;
- (d) during both open and closed seasons, permit, limit, regulate or prohibit, the incidental catch of halibut that may be taken, retained, possessed, or landed from each area or portion of an area, by vessels fishing for other species of fish;
- (e) prohibit departure of vessels from any port or place, or from any receiving vessel or station, to any area for halibut fishing, after any date when in the judgment of the International Pacific Halibut Commission the vessels which have departed for that area prior to that date or which are known to be fishing in that area shall suffice to catch the limit which shall have been set for that area under section (c) of this paragraph;
- (f) fix the size and character of halibut fishing appliances to be used in any area;
- (g) make such regulations for the licencing and departure of vessels and for the collection of statistics of the catch of halibut as it shall find necessary to determine the condition and trend of the halibut fishery and to carry out the other provisions of this Convention;
- (h) close to all taking of halibut such portion or portions of an area or areas as the International Halibut Commission finds

to be populated by small, immature halibut and designates as nursery grounds.

ARTICLE IV

The Contracting Parties agree to enact and enforce such legislation as may be necessary to make effective the provisions of this Convention and any regulation adopted thereunder, with appropriate penalties for violations thereof.

ARTICLE V

1. This Convention shall be ratified and the instruments of ratification exchanged at Washington as soon as possible.

2. This Convention shall enter into force on the date of exchange of ratifications and shall remain in force for a period of five years and thereafter until two years from the date on which either Contracting Party shall have given notice to the other of its desire to terminate it.

3. This Convention shall, from the date of the exchange of ratifications, replace and terminate the Convention for the preservation of the halibut fishery signed at Ottawa, January 29, 1937.

IN WITNESS WHEREOF the respective plenipotentiaries have signed and sealed this Convention.

DONE at Ottawa in duplicate, in the English language, this second day of March 1953.

[Signatures omitted.]

F. Western Pacific

1. INTRODUCTORY NOTE. Documents with respect to developments in this area are difficult to acquire. Japan as a leading fishing nation is involved in most, if not all, the problems of the area. *The New York Times*, 11 June 1956, page 10, col. 1, reports release by the Japanese Foreign Ministry in its June 1956, *Information Bulletin* of a list of seizures of Japanese fishing vessels since 1947 in waters traditionally regarded as high seas. According to these statistics, the U.S.S.R. has seized 450 vessels and 3,832 persons; South Korea, 209 vessels and 2,700 persons; Communist China, 121 vessels and 1,943 persons; and Nationalist China, 50 vessels and 620 persons. Some of these vessels and persons are still detained by each of the countries. Seizures by the Soviet Union in 1955 were twice the number of any previous year, the biggest increase occurring during the month of negotiations on a peace treaty. Even after the signing of a peace treaty, reported, *infra*, (2) below, it is reported that Soviet seizures have increased. *The New York Times*, 11 November 1956, page 7, cols. 1-2. There have been no seizures by Nationalist China since a peace treaty was concluded. Seizures by Communist China have declined markedly since the conclusion of the non-governmental fishing agreement in April 1952, (3) below. On 12 June 1956, a fisheries agreement was signed by the Soviet Union, Communist China, North Korea, and North

Vietnam, which is reputedly open to other countries in the Western Pacific region. *The New York Times*, 13 June 1956, page 12, col. 6.

2. Treaty between Japan and the Union of Soviet Socialist Republics concerning Fisheries on the High Seas in the North Pacific Ocean and Annex. (Entered into Force 12 December 1956)

a. NOTE. On 21 March 1956, the Soviet Union established unilaterally a restricted fishing zone in the high seas of the Sea of Okhotsk, the western part of the Bering Sea, and part of the North Pacific. *The New York Times*, 22 March 1956, page 14, col. 3. The text of the decree is reprinted *infra*, Section VI, B, 36, b, 1. This decree sets limits on the 1956 catch. On 14 May 1956, the Soviet Union agreed to conclude a short-term fisheries agreement with Japan raising the limits for the 1956 season and replacing the unilateral restrictions. *The New York Times*, 15 May 1956, page 1, col. 8. On 15 May 1956, the two countries signed a long-term fisheries agreement which is to become effective when a peace treaty is signed or diplomatic relations are resumed. On 19 October 1956, the two countries reached agreement on a peace treaty. In a Joint Declaration issued on that date, Paragraph 8 stated that the long-term fisheries agreement would enter into force when both countries have ratified the Declaration. An account of the settlement and the text of the Joint Declaration may be found in *The New York Times*, 20 October 1956, page 1, col. 5, and page 2, cols. 4-6, respectively. The text of this treaty and annex is taken from the *Fishery Information Bulletin Supplements* of the N.C.A. for 25 May and 1 June 1956. The Treaty entered into force on 12 December 1956 upon the exchange of ratifications in Tokyo. *The New York Times*, 13 December 1956, page 3, cols. 1 and 2.

* * * * *

b. Treaty Between Japan and the Union of Soviet Socialist Republics Concerning Fisheries on the High Seas in the North Pacific Ocean

(*Entered into force 12 December 1956*)

The Government of Japan and the Government of the Union of Soviet Socialist Republics, having a common interest in the development of fisheries on a rational basis in the Northwestern Pacific, and taking into consideration their mutual responsibilities regarding conditions of the fish species and other marine animal resources and their effective utilization;

In recognition of their agreement that the maintenance of the maximum sustained productivity of fisheries in the Northwestern Pacific is of common benefit to mankind and the two Signatory Powers;

Considering that each Signatory should assume the duty on a free and equal basis to plan for the preservation and increase of the above described resources;

The two Signatories, recognizing that it is highly desirable to

promote and coordinate scientific research for the purpose of maintaining maximum sustained productivity in the fisheries with which the two Signatories are concerned;

Have, therefore, decided to conclude this Treaty and have respectively appointed Representatives for this purpose. These Representatives have agreed as follows:

ARTICLE I

1. The area to which this Treaty applies (hereinafter called "Treaty Area") shall be the entire waters (excluding territorial waters) of the Northwestern Pacific Ocean, including the Japan Sea, the Sea of Okhotsk, and the Bering Sea.

2. It shall be understood that no provisions of this Treaty shall affect in any way whatsoever the position of the Signatories as regards the extent of the territorial waters and their jurisdiction over fisheries [therein?].

ARTICLE II

1. Both Signatories agree, for the preservation and development of fish and other marine animal resources (hereinafter to be called "fishery resources"), to adopt for the Treaty Area the joint measures indicated in the Appendix to this Treaty.

2. The Appendix to this Treaty shall be considered as constituting an inseparable part of the Treaty. The word "Treaty" shall be understood to include this Appendix in its present wording or as amended in accordance with Paragraph (a) of Article IV.

ARTICLE III

1. In order to fulfill the objectives of the Treaty, both Signatories shall establish a Japanese-Soviet Fisheries Commission (hereinafter called "Commission").

2. The Commission shall be comprised of two National Committee Divisions; each National Committee Division shall consist of three Commissioners appointed by the Governments of the respective Signatories.

3. All resolutions, recommendations, and other decisions of the Commission shall be made only upon agreement between the National Committee Divisions.

4. The Commission shall determine the rules for the conduct of meetings and may revise them whenever necessary.

5. The Commission shall meet at least once annually and in addition may meet at the request of the Nationality Committee Division of either party. The date and place of the first meeting shall be determined by agreement between the two Signatories.

6. The Commission shall at its first meeting select a Chairman and a Vice Chairman from the two different National Committee Divisions. The Chairman and the Vice Chairman shall be selected for a term of one year. The selection of the Chairman and the Vice Chairman from the National Committee Divisions shall be accomplished in such a way that each year Signatories shall be represented in these positions on a rotation basis.

7. The official languages of the Commission shall be Japanese and Russian.

8. The expenses incurred by the Commissioners in attending Commission meetings shall be defrayed by the appointing government. The Commission shall pay the joint expenses of the Commission in accordance with the allotted charges to be borne by the two Signatories as advised by the Commission after the formality of approval and allocation by the two Signatories.

ARTICLE IV

The Commission shall carry out the following duties:

(a) At the meeting following regular annual meetings, joint measures which are being enforced at the time shall be examined for their appropriateness and, if necessary, the Appendix to this Treaty may be amended. These amendments shall be determined on a scientific basis.

(b) If, in accordance with the Appendix, a fish species requires determination of the total annual catch, the Commission shall determine the amount of annual catch for the said fish species for both Signatories and report the figure to the two Signatory Powers.

(c) In implementing this Treaty, the Commission shall determine the kind and scope of statistics and other data which each Signatory shall submit to the Commission.

(d) The Commission shall draw up and coordinate joint scientific research programs for the purpose of studying fishery resources and shall recommend these to the two Signatories.

(e) It shall submit annually to both Signatories a report of the activities of the Commission.

(f) Besides the duties indicated in the previous sections, the Commission may make recommendations to the two Signatories on problems dealing with the preservation and increase of fishery resources within the Treaty Area.

ARTICLE V

In order mutually to exchange experience concerning fishery regulation and the study and preservation of fishery resources,

both Signatories agree to carry out an exchange of men of science with experience in fisheries. These exchanges of persons shall be carried out upon agreement by the two parties for each such occasion.

ARTICLE VI

1. The two Signatories shall take appropriate and effective measures to carry out this Treaty.

2. When a Signatory receives notification from the Commission relative to the amount of the total annual catch as determined for the Signatory in accordance with Paragraph (b) of Article IV, it shall issue licenses or certificates to fishing vessels on this basis, and the two Signatories shall notify each other concerning the issuance of all such licenses and certificates.

3. The licenses and certificates to be issued by the two Signatories shall be written in both Japanese and Russian and shall always be carried aboard when the fishing vessel is in operation.

4. In order to make the provisions of this Treaty effective, the two signatories shall enact and enforce the necessary laws and regulations, with appropriate punishment for violations committed by their citizens, organizations, and fishing vessels; moreover, both agree to submit to the Commission a report on the measures taken by their own country concerning this matter.

ARTICLE VII

1. When an authorized official of either of the Signatory Parties has sufficient reason to believe that a fishing vessel of the other Signatory is actually in violation of the provisions of this Treaty, the said official may board and search the said fishing vessel in order to determine whether or not the fishing vessel is observing the provisions of this Treaty. If the ship's captain demands it, the aforesaid official must present his identification papers issued by the Signatory Government to which he belongs, which shall be written in Japanese and Russian.

2. The said official may seize the said fishing vessel or arrest an individual if he discovers facts proving violations of the provisions of this Treaty by the fishing vessel or by an individual on board, as a result of his search of the said fishing vessel.

In such case, the Signatory Power to which the said official belongs shall as soon as possible inform the other Signatory Power to which the aforesaid fishing vessel or individual belongs, of the seizure or arrest; if the two Signatories cannot agree upon a different location, the said fishing vessel or individual must be

turned over as quickly as possible at the same location to an authorized official of the Signatory Power to which they belong. If, however, the said Signatory Power which received the report is not able immediately to receive them, and if the other Signatory Power is requested, the Signatory Power which receives such request may place the said fishing vessel or individual under surveillance within its own territory, if this is mutually agreed to by the two Signatories.

3. Only the authorities of the Signatory Power to which the said fishing vessel or individual belongs may try cases arising in connection with this Treaty; furthermore, they shall have the authority to mete out punishment for these [violations]. Records and evidence proving violation shall as soon as possible be presented to the Signatory Power having the jurisdictional right to try the case.

ARTICLE VIII

1. This Treaty shall come into force on the effective date of a Peace Treaty between Japan and the Union of Soviet Socialist Republics or on the date of resumption of diplomatic relations.

2. Either of the Signatories may inform the other Signatory of its intention to abrogate this Treaty at any time after a period of ten years following the date on which this Treaty comes into force.

If such notification is given, this Treaty shall terminate one year after the date on which the abrogation notification was received by the other Signatory Power.

IN WITNESS WHEREOF, the Undersigned Representatives have signed the present Treaty.

DONE at Moscow, in duplicate, in the Japanese and Russian languages, each text having equal authenticity, this [fifteenth] day of May, 1956.

[Signatures omitted.]

* * * * *

ANNEX TO THE TREATY

Between Japan and the Union of Soviet Socialist Republics Concerning Fisheries on the High Seas in the North Pacific Ocean (1956)

Both Signatories agree to regulate the catch of the following fish and other marine animals in the Treaty Area:

1. Salmon

Salmon (*Oncorhynchus keta*)

Trout (*Oncorhynchus gorbusha*)

Silver salmon (*Oncorhynchus kisutch*)

Red salmon (*Oncorhynchus nerka*)

King salmon (*Oncorhynchus tshawytscha*)

(a) The area in which the regulations will be enforced shall be the Japan Sea north of north latitude 45° and the North-western Pacific (including the Okhotsk and Bering Seas) divided into east and south by a line running southeast from Cape Navarin to the intersection of north latitude 55° and west longitude 175° south to the intersection of north latitude 45° and west longitude 175° , thence running westerly to the intersection of north latitude 45° and east longitude 155° , and then southwesterly to the island of Aki-yuri-shima.

(b) For the 1956 fishing season, fisheries on the sea with mobile fishing equipment shall be prohibited in treaty waters 40 miles from the coastline of islands or continental coasts belonging to either Signatory within the area indicated in (a).

The aforesaid prohibited area shall be reexamined by the Commission as soon as possible on the basis of future research data.

Within the aforesaid prohibited area, in the area adjacent to Hokkaido the aforesaid provision prohibiting fisheries on the sea with mobile fishing equipment shall not apply to small Japanese fishing boats.

(c) The total catch shall be determined by the Commission. The total catch for the first year the Treaty is put into force shall be determined at the first meeting of the Commission.

(d) Concerning mother-ship type fisheries, the annual catch (based on the gross weight of the fish) per ship shall not exceed 300 metric tons and 150 metric tons for fishing vessels and research vessels respectively.

The total catch of all the fishing vessels and research vessels belonging to one mother-ship shall not exceed the total catch stipulated for one mother-ship. Within the limits of the said total catch, the catch of individual fishing vessels and research vessels may somewhat exceed the aforesaid amounts, respectively stipulated for each of the fishing vessels and research vessels.

(e) The fishery season shall close each year on August tenth.

(f) The length of drift nets to be laid in the seas by one fishing vessel shall be as follows:

In the Okhotsk Sea, less than 10 kilometers.

In the Pacific waters divided into east and south by a line joining Cape Olytorski with the point of intersection of north latitude

48°, and east longitude 175°25' with the island of Aki-yuri-shima, less than 12 kilometers.

In other waters, less than 15 kilometers.

The space between nets for the drift nets laid by one fishing vessel shall be confirmed immediately after the casting of nets. The distance between one net and the nearest net to it shall be in every direction as follows:

In the waters of the Okhotsk Sea more than 12 kilometers.

In the Pacific waters divided into east and south by a line joining Cape Olytorski with the point of intersection of north latitude 48°, and east longitude 170°25' with the island of Aki-yuri-shima, more than 10 kilometers.

In other waters, more than 8 kilometers.

The aforesaid provisions, however, shall not apply to small fishing boats which operate south of north latitude 48° and which have their bases in Japanese ports.

With regard to the openings of drift nets, they shall be more than 55 millimeters in length from knot to knot.

2. Herring (*Clupea pallasii*)

Small, immature herrings under 20 centimeters in length (from the tip of the mouth to the tip of the tail fin along the central bone) shall not be caught.

Mixed catches of small herring shall be allowed, provided the amounts are not large; such limits shall be determined by the Commission.

3. Crabs

Tarabagani (*Paralithodes camtschatica*)

Aburagani (*Paralithodes purachibus*)

(a) The catching of female crabs and small, immature crabs of less than 13 centimeters in width shall be prohibited. Female crabs and the aforesaid small crabs, which are caught in nets and pulled up out of the water, must be thrown back as soon as possible. Mixed catches of female crabs and the aforesaid small crabs shall be allowed, provided the amount is not large; such limits shall be determined by the Commission.

When the mixed catches of female crabs and the aforesaid small crabs have reached whatever the limit is for a certain area, the Commission shall determine whether fishing in that area should cease or not.

(b) The Commission shall establish the limits on the length of the crab nets, the distance between these nets in one line, and

the spacings between the lines, taking into consideration the protection of the resources and efficient operation.

3. Non-governmental Agreement Concerning Fishing in the Yellow Sea and the East China Sea (1956)

a. NOTE. This non-governmental agreement between "private" fisheries associations of Communist China and of Japan was signed in Peking, 15 April 1956, after more than ninety days of negotiation. The previous seizures of Japanese vessels and persons by Communist China was referred to above. The main clauses of the text were translated and furnished by the Department of State. Translations of the Attached Documents were not available. A complete text of the Agreement and the Attached Documents in Chinese and Japanese is in the files of the Union Research Institute, 110 Waterloo Road, Kowloon, Hong Kong.

* * * * *

b. AGREEMENT BETWEEN THE CHINESE FISHERIES ASSOCIATION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE JAPAN-CHINA FISHERIES ASSOCIATION OF JAPAN CONCERNING FISHING IN THE YELLOW SEA AND THE EAST CHINA SEA (1956)

The entire delegations dispatched respectively from the Chinese Fisheries Association of the People's Republic of China and from the Japan-China Fisheries Association of Japan (hereinafter referred to as both Fisheries Associations), in order to utilize the fishing grounds in the Yellow Sea and East China Sea rationally, to conserve fishing resources, to avoid any disputes which might arise in connection with fishing operations, and to promote friendly collaboration between Chinese and Japanese fishing operators on the principle of equality and mutual interests and peaceful co-existence, have after conferring with each other, unanimously reached the following agreement.

ARTICLE 1. Coming under application of this Agreement shall be the high seas in the Yellow Sea and East China Sea east of a line connecting the following points and north of 29 degrees north latitude. The point 39° 46' 48" N. Lat. and 124° 10' E. Long.; the point 37° 20' N. Lat. and 123° 3' E. Long.; the point 36° 48' 10" N. Lat., 122° 43' E. Long.; the point 35° 11' N. Lat. and 120° 38' E. Long.; the point 30° 44' N. Lat. and 123° 23' E. Long.; the point 29° N. Lat. and 122° 45' E. Long.

ARTICLE 2. (1) The two Fisheries Associations shall set a maximum number of dragnet fishing motor vessels (including dragnet ships either in pairs or singly, regardless) of both the Japanese and the Chinese sides which operate in the six fishing areas within the waters covered by this Agreement for a certain fixed period of time. Details thereof shall be worked out in accordance with the Attached Document No. 1.

(2) No restrictions shall be placed on navigation within the waters covered by this Agreement.

ARTICLE 3. Dragnet fishing motor vessels of both the Japanese and Chinese sides shall abide by the provisions set forth in the Attached Document No. 2 in order to insure safe operations of dragnet vessels with other dragnet vessels and different types of fishing vessels and to maintain normal order in these waters.

ARTICLE 4. (1) In the event that any of dragnet fishing vessels of either the Japanese or the Chinese sides needs urgent shelter or rescue due to shipwreck or other disaster of an Act of God, nature, or serious injury or sudden illness, both the Fisheries Associations and the fishing vessels operating in the fishing grounds shall extend as much cooperation and help as possible.

(2) In the event dragnet fishing vessels of either side stop at a port of the other side because of accident demanding urgent attention, they shall have to abide by the provisions set forth in the Attached Table No. 3.

ARTICLE 5. Both the Fisheries Associations are desirous of exchanging data and materials regarding research and study and improvement of techniques of fishing to conserve fishing resources and increase fishing production. Details thereof are prescribed in the Attached Document Table No. 4.

ARTICLE 6. (1) When a dragnet fishing vessel of either side discovers any dragnet fishing vessel of the other side acting in violation of the provisions of the Article 2, it shall notify the Fisheries Association to which it belongs, which in turn shall bring the matter to the attention of the Fisheries Associations of the other side and have action taken thereon. Upon receipt of the notification, the Fisheries Association of the other side shall take action against the vessel which has violated the provisions of the Article 2 by meting out warning or punishment, and shall also inform the other side of the result of the action it has taken.

(2) When a dispute arises between Japanese and Chinese dragnet fishing vessels or between a dragnet fishing vessel and another fishing vessel, every effort shall be made to talk it over and reach a decision right at the spot where the trouble occurs. In the event of difficulties of having it solved on the spot, each side shall report it to its own Fisheries Association and both Fisheries Associations shall solve it after making the investigation of the actual situation.

(3) When a dragnet fishing vessel of either side inflicts damage on a dragnet vessel or other fishing vessel of the other side in violation of the provisions of the Article 3, both vessels involved shall report the matter to their respective Fisheries Associations,

and both Fisheries Associations shall take action after making due investigation of the actual situation.

ARTICLE 7. The Attached Documents of the Agreement and the text of this Agreement shall be equally authoritative.

ARTICLE 8. Both Fisheries Associations shall be responsible for putting this Agreement into effect.

ARTICLE 9. Both Fisheries Associations shall endeavor to urge their respective Governments to conduct negotiations to solve Japan-China fishing problems and conclude a fisheries agreement between the two countries, China and Japan.

ARTICLE 10. (1) This Agreement shall go into effect 60 days after signing.

(2) Both sides shall complete necessary processing and preparations within 45 days after the signing, and notify each other of it.

ARTICLE 11. This Agreement shall remain in force for one year from the day it becomes effective.

Signed on April 15, 1955 in Peking, prepared in two copies, each of which is written in both Japanese and Chinese languages, and provisions in both languages have the same authority.

[Signatures and Attached Documents omitted.]

G. Eastern Pacific

1. Convention Between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission, and Exchange of Notes (1950). Adherence by Panama 21 September 1953

a. NOTE. This Convention, which entered into force for Costa Rica and the United States on 3 March 1950, was signed at Washington, 31 May 1949; ratification advised by the Senate 17 August 1949; ratified by the President 1 September 1949; ratified by Costa Rica 23 December 1949; ratifications exchanged at Washington 3 March 1950; and proclaimed by the President 23 March 1950. The Exchange of Notes took place 3 March 1950. Article V, 3rd Paragraph, provides for adherence by any government whose nationals participate in the fisheries covered by the Convention. Adherence by Panama became effective 21 September 1953. As of 1 July 1956, no other countries had adhered. There is, however, a bilateral Convention between the United States and Mexico providing for the establishment of an international commission for the scientific investigation of Tuna (*TIAS* 2094). A letter to the Editor from the Deputy Legal Adviser of the Department of State, dated 19 July 1956, states that the Convention with Costa Rica is the only active fisheries convention between the United States and Latin-American States. The text of the Convention and Exchange of Notes may be found in 1 *UST* 230; 80 *UNTS* 3, and *TIAS* 2044. The latter is the source used for the texts below.

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b. CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF COSTA RICA FOR THE ESTABLISHMENT OF AN INTER-AMERICAN TROPICAL TUNA COMMISSION (1950)

The United States of America and the Republic of Costa Rica considering their mutual interest in maintaining the populations of yellow-fin and skipjack tuna and of other kinds of fish taken by tuna fishing vessels in the eastern Pacific Ocean which by reason of continued use have come to be of common concern, and desiring to cooperate in the gathering and interpretation of factual information to facilitate maintaining the populations of these fishes at a level which will permit maximum sustained catches year after year, have agreed to conclude a Convention for these purposes and to that end have named as their Plenipotentiaries:

[Names omitted.]

who, having communicated to each other their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

1. The High Contracting Parties agree to establish and operate a joint Commission, to be known as the Inter-American Tropical Tuna Commission, hereinafter referred to as the Commission, which shall carry out the objectives of this Convention. The Commission shall be composed of national sections, each consisting of from one to four members, appointed by the Governments of the respective High Contracting Parties.

2. The Commission shall submit annually to the Government of each High Contracting Party a report on its investigations and findings, with appropriate recommendations, and shall also inform such Governments, whenever it is deemed advisable, on any matter relating to the objectives of this Convention.

3. Each High Contracting Party shall determine and pay the expenses incurred by its section. Joint expenses incurred by the Commission shall be paid by the High Contracting Parties through contributions in the form and proportion recommended by the Commission and approved by the High Contracting Parties. The proportion of joint expenses to be paid by each High Contracting Party shall be related to the proportion of the total catch from the fisheries covered by this Convention utilized by that High Contracting Party.

4. Both the general annual program of activities and the budget of joint expenses shall be recommended by the Commission and submitted for approval of the High Contracting Parties.

5. The Commission shall decide on the most convenient place or places for its headquarters.

6. The Commission shall meet at least once each year, and at such other times as may be requested by a national section. The date and place of the first meeting shall be determined by agreement between the High Contracting Parties.

7. At its first meeting the Commission shall select a chairman and a secretary from different national sections. The chairman and the secretary shall hold office for a period of one year. During succeeding years, selection of the chairman and the secretary from the national sections shall be in such a manner that the chairman and the secretary will be of different nationalities, and as will provide each High Contracting Party, in turn, with an opportunity to be represented in those offices.

8. Each national section shall have one vote. Decisions, resolutions, recommendations, and publications of the Commission shall be made only by a unanimous vote.

9. The Commission shall be entitled to adopt and to amend subsequently, as occasion may require, by-laws or rules for the conduct of its meetings.

10. The Commission shall be entitled to employ necessary personnel for the performance of its functions and duties.

11. Each High Contracting Party shall be entitled to establish an Advisory Committee for its section, to be composed of persons who shall be well informed concerning tuna fishery problems of common concern. Each such Advisory Committee shall be invited to attend the non-executive sessions of the Commission.

12. The Commission may hold public hearings. Each national section also may hold public hearings within its own country.

13. The Commission shall designate a Director of Investigations who shall be technically competent and who shall be responsible to the Commission and may be freely removed by it. Subject to the instruction of the Commission and with its approval, the Director of Investigations shall have charge of:

(a) The drafting of programs of investigations, and the preparation of budget estimates for the Commission;

(b) authorizing the disbursement of the funds for the joint expenses of the Commission;

(c) the accounting of the funds for the joint expenses of the Commission;

(d) the appointment and immediate direction of technical and other personnel required for the functions of the Commission;

(e) arrangements for the cooperation with other organizations or individuals in accordance with paragraph 16 of this Article;

(f) the coordination of the work of the Commission with

that of organizations and individuals whose cooperation has been arranged for ;

(g) the drafting of administrative, scientific and other reports for the Commission ;

(h) the performance of such other duties as the Commission may require.

14. The official languages of the Commission shall be English and Spanish, and members of the Commission may use either language during meetings. When requested, translation shall be made to the other language. The minutes, official documents, and publications of the Commission shall be in both languages, but official correspondence of the Commission may be written, at the discretion of the Secretary, in either language.

15. Each national section shall be entitled to obtain certified copies of any documents pertaining to the Commission except that the Commission will adopt and may amend subsequently rules to ensure the confidential character of records of statistics of individual catches and individual company operations.

16. In the performance of its duties and functions the Commission may request the technical and scientific services of, and information from, official agencies of the High Contracting Parties, and any international, public, or private institution or organization, or any private individual.

ARTICLE II

The Commission shall perform the following functions and duties:

1. Make investigations concerning the abundance, biology, biometry, and ecology of yellowfin (*Neothunnus*) and skipjack (*Katsuwonus*) tuna in the waters of the eastern Pacific Ocean fished by the nationals of the High Contracting Parties, and the kinds of fishes commonly used as bait in the tuna fisheries, especially the anchovetta, and of other kinds of fish taken by tuna fishing vessels; and the effects of natural factors and human activities on the abundance of the populations of fishes supporting all these fisheries.

2. Collect and analyze information relating to current and past conditions and trends of the populations of fishes covered by this Convention.

3. Study and appraise information concerning methods and procedures for maintaining and increasing the populations of fishes covered by this Convention.

4. Conduct such fishing and other activities, on the high seas and in waters which are under the jurisdiction of the High

Contracting Parties, as may be necessary to attain the ends referred to in subparagraphs 1, 2, and 3 of this Article.

5. Recommend from time to time, on the basis of scientific investigations, proposals for joint action by the High Contracting Parties designed to keep the populations of fishes covered by this Convention at those levels of abundance which will permit the maximum sustained catch.

6. Collect statistics and all kinds of reports concerning catches and the operations of fishing boats, and other information concerning the fishing for fishes covered by this Convention, from vessels or persons engaged in these fisheries.

7. Publish or otherwise disseminate reports relative to the results of its findings and such other reports as fall within the scope of this Convention, as well as scientific, statistical, and other data relating to the fisheries maintained by the nationals of the High Contracting Parties for the fishes covered by this Convention.

ARTICLE III

The High Contracting Parties agree to enact such legislation as may be necessary to carry out the purposes of this Convention.

ARTICLE IV

Nothing in this Convention shall be construed to modify any existing treaty or convention with regard to the fisheries of the eastern Pacific Ocean previously concluded by a High Contracting Party, nor to preclude a High Contracting Party from entering into treaties or conventions with other States regarding these fisheries, the terms of which are not incompatible with the present Convention.

ARTICLE V

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. The present Convention shall enter into force on the date of exchange of ratifications.

3. Any government, whose nationals participate in the fisheries covered by this Convention, desiring to adhere to the present Convention, shall address a communication to that effect to each of the High Contracting Parties. Upon receiving the unanimous consent of the High Contracting Parties to adherence, such government shall deposit with the Government of the United States of America an instrument of adherence which shall stipulate the effective date thereof. The Government of the United States of

America shall furnish a certified copy of the Convention to each government desiring to adhere thereto. Each adhering government shall have all the rights and obligations under the Convention as if it had been an original signatory thereof.

4. At any time after the expiration of ten years from the date of entry into force of this Convention any High Contracting Party may give notice of its intention of denouncing the Convention. Such notification shall become effective with respect to such notifying government one year after its receipt by the Government of the United States of America. After the expiration of the said one year period the Convention shall be effective only with respect to the remaining High Contracting Parties.

5. The Government of the United States of America shall inform the other High Contracting Parties of all instruments of adherence and of notifications of denunciation received.

IN WITNESS WHEREOF THE respective Plenipotentiaries have signed the present Convention.

DONE at Washington, in duplicate, in the English and Spanish languages, both texts being equally authentic, this 31st day of May, 1949.

[Spanish Text and Signatures omitted.]

* * * * *

[Translation]

c. EXCHANGE OF NOTES (1950)

Embassy of Costa Rica

Washington

No. 1579

March 3, 1950.

EXCELLENCY:

I have the honor to refer to the Convention between the Republic of Costa Rica and the United States of America for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, D.C., on May 31, 1949, which entered into force this day, and to inform Your Excellency of the desire of my Government to place on record the understanding of our two Governments with respect to the manner in which certain provisions of that Convention shall be applied. Accordingly, I take pleasure in informing you that, without prejudice to the provisions and purposes of the Convention under reference, the understanding of my Government in regard to this matter is that which I set forth to you as follows.

With respect to Article I, paragraph 3, of the Convention, which establishes the proportion of joint expenses to be paid by each High

Contracting Party, it is understood that "the proportion of the total catch from the fisheries covered by this Convention utilized by that High Contracting Party" shall be the part of the total catch which is used for domestic consumption in the territory of that High Contracting Party or is the object of commercial transactions the financial benefits of which accrue entirely or in their major portion to individuals or firms whose proprietors or stockholders are domiciled in the territory of that High Contracting Party.

With respect to Article II, paragraph 4, of the Convention, it is understood that the Inter-American Tropical Tuna Commission is authorized to engage in fishing and other activities for scientific research exclusively and that no commercial ventures by the Commission are contemplated.

It is further understood, that, notwithstanding the specific powers conferred upon the Commission, nothing in the Convention shall be interpreted as a relinquishment of or a limitation upon the sovereignty of a High Contracting Party over waters under its jurisdiction.

My Government also desires to state that it recognizes as the authentic Spanish text of the Convention that contained in the Convention as signed, but at the same time recognizes that certain of its provisions might have been worded more clearly in the following form:

ARTICLE I, PARAGRAPH 1.

"The High Contracting Parties agree to establish and maintain a Joint Commission to be known as the Inter-American Tropical Tuna Commission, which will hereinafter be called the Commission, which shall carry into effect the objectives of this Convention. The Commission shall be made up of national sections, each of which shall include from one to four members appointed by the Governments of the respective High Contracting Parties."

ARTICLE I, PARAGRAPH 3.

"Each of the High Contracting Parties shall determine and pay the expenses incurred by its respective section. The joint expenses incurred by the Commission shall be covered by the High Contracting Parties through contributions in such form and proportion as the Commission may recommend and the High Contracting Parties may approve. The proportion of the joint expenses to be paid by each of the High Contracting Parties shall be in relation to the proportion of the total catch from the fisheries covered by this Convention utilized by that High Contracting Party."

ARTICLE I, PARAGRAPH 8.

"Each national section shall have the right to one vote. The decisions, resolutions, recommendations and publications of the Commission must be approved by a unanimous vote."

ARTICLE IV.

"Nothing in the Convention shall be interpreted as changing any existing treaty or convention relating to the fisheries of the Eastern Pacific previously signed by one of the High Contracting Parties, nor as preventing a High Contracting Party from entering into treaties or conventions with other States relating to such fisheries, provided their terms are not incompatible with this Convention."

I avail myself of this opportunity to express to Your Excellency my highest consideration.

MARIO ECHANDI

His Excellency
DEAN ACHESON,
Secretary of State,
Washington, D. C.

The Secretary of State to the Costa Rican Appointed Ambassador
Department of State
Washington
March 3, 1950.

EXCELLENCY:

I have the honor to refer to your note No. 1579 of March 3, 1950 regarding the Convention between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, which entered into force this day, and the desire of your Government to place on record the understanding of our Governments with respect to the manner in which certain provisions of that Convention shall be applied. Accordingly, I take pleasure in informing you that, without prejudice to the provisions or purposes of the Convention under reference, my Government concurs in the understanding set forth in your note as follows:

With respect to Article I, paragraph 3, of the Convention, which establishes the proportion of joint expenses to be paid by each High Contracting Party, it is understood that "the proportion of the total catch from the fisheries covered by this Convention

utilized by that High Contracting Party" shall be the part of the total catch which is used for domestic consumption in the territory of that High Contracting Party or is the object of commercial transactions the financial benefits of which accrue entirely or in their major portion to individuals or firms whose proprietors or stockholders are domiciled in the territory of that High Contracting Party.

With respect to Article II, subparagraph 4, of the Convention, it is understood that the Inter-American Tropical Tuna Commission is authorized to engage in fishing and other activities for scientific research exclusively and that no commercial ventures by the Commission are contemplated.

It is further understood that, notwithstanding the specific powers conferred upon the Commission, nothing in the Convention shall be interpreted as a relinquishment of or a limitation upon the sovereignty of a High Contracting Party over waters under its jurisdiction.

My Government has also taken note of your statement that certain provisions of the Spanish text might have been more clearly expressed but that your Government recognizes that the authentic Spanish text of the Convention is that contained in the Convention as signed.

Accept, Excellency, the renewed assurances of my highest consideration.

DEAN ACHESON

His Excellency

SEÑOR DON MARIO ECHANDI,

Appointed Ambassador of Costa Rica.

H. Great Lakes

1. Convention on Great Lakes Fisheries Between the United States of America and Canada (1954)

a. NOTE. This Convention entered into force 11 October 1955. It was signed at Washington 10 September 1954; ratification advised by the Senate 1 June 1955; ratified by the President 6 June 1955; ratified by Canada 6 October 1955; ratifications exchanged at Ottawa 11 October 1955; and proclaimed by the President 20 October 1955. The text below is taken from *TIAS* 3326. The Convention is discussed by Selak in 50 *A.J.I.L.* 122 (1956).

* * * * *

b. CONVENTION ON GREAT LAKES FISHERIES BETWEEN THE UNITED STATES OF AMERICA AND CANADA (1954)

The Government of the United States of America and the Government of Canada,

Taking note of the interrelation of fishery conservation problems and of the desirability of advancing fishery research in the Great Lakes,

Being aware of the decline of some of the Great Lakes fisheries,
 Being concerned over the serious damage to some of these fisheries caused by the parasitic sea lamprey and the continuing threat which this lamprey constitutes for other fisheries,

Recognizing that joint and coordinated efforts by the United States of America and Canada are essential in order to determine the need for and the type of measures which will make possible the maximum sustained productivity in Great Lakes fisheries of common concern,

Have resolved to conclude a convention and have appointed as their respective Plenipotentiaries:

The Government of the United States of America:

Walter Bedell Smith, Acting Secretary of State of the United States of America, and

William C. Herrington, Chairman of the Delegation of the United States of America to the Great Lakes Fisheries Conference; and

The Government of Canada:

Arnold Danford Patrick Heeney, Ambassador Extraordinary and Plenipotentiary of Canada to the United States of America, and

Stewart Bates, Chairman of the Delegation of Canada to the Great Lakes Fisheries Conference,

who, having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I

This Convention shall apply to Lake Ontario (including the St. Lawrence River from Lake Ontario to the forty-fifth parallel of latitude), Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior and their connecting waters, hereinafter referred to as "the Convention Area". This Convention shall also apply to the tributaries of each of the above waters to the extent necessary to investigate any stock of fish of common concern, the taking or habitat of which is confined predominantly to the Convention Area, and to eradicate or minimize the populations of the sea lamprey (*Petromyzon marinus*) in the Convention Area.

ARTICLE II

1. The Contracting Parties agree to establish and maintain a

joint commission, to be known as the Great Lakes Fishery Commission, hereinafter referred to as "the Commission", and to be composed of two national sections, a Canadian Section and a United States Section. Each Section shall be composed of not more than three members appointed by the respective Contracting Parties.

2. Each Section shall have one vote. A decision or recommendation of the Commission shall be made only with the approval of both Sections.

3. Each Contracting Party may establish for its Section an advisory committee for each of the Great Lakes. The members of each advisory committee so established shall have the right to attend all sessions of the Commission except those which the Commission decides to hold *in camera*.

ARTICLE III

1. At the first meeting of the Commission and at every second subsequent annual meeting thereafter the members shall select from among themselves a Chairman and a Vice-Chairman, each of whom shall hold office from the close of the annual meeting at which he has been selected until the close of the second annual meeting thereafter. The Chairman shall be selected from one Section and the Vice-Chairman from the other Section. The offices of Chairman and Vice-Chairman shall alternate biennially between the Sections.

2. The seat of the Commission shall be at such place in the Great Lakes area as the Commission may designate.

3. The Commission shall hold a regular annual meeting at such place as it may decide. It may hold such other meetings as may be agreed upon by the Chairman and Vice-Chairman and at such time and place as they may designate.

4. The Commission shall authorize the disbursement of funds for the joint expenses of the Commission and may employ personnel and acquire facilities necessary for the performance of its duties.

5. The Commission shall make such rules and by-laws for the conduct of its meetings and for the performance of its duties and such financial regulations as it deems necessary.

6. The Commission may appoint an Executive Secretary upon such terms as it may determine.

7. The staff of the Commission may be appointed by the Executive Secretary in the manner determined by the Commission or appointed by the Commission itself on terms to be determined by it.

8. The Executive Secretary shall, subject to such rules and procedures as may be determined by the Commission, have full power and authority over the staff and shall perform such functions as the Commission may prescribe. If the office of Executive Secretary is vacant, the Commission shall prescribe who shall exercise such power or authority.

ARTICLE IV

The Commission shall have the following duties:

(a) to formulate a research program or programs designed to determine the need for measures to make possible the maximum sustained productivity of any stock of fish in the Convention Area which, in the opinion of the Commission, is of common concern to the fisheries of the United States of America and Canada and to determine what measures are best adapted for such purpose;

(b) to coordinate research made pursuant to such programs and, if necessary, to undertake such research itself;

(c) to recommend appropriate measures to the Contracting Parties on the basis of the findings of such research programs;

(d) to formulate and implement a comprehensive program for the purpose of eradicating or minimizing the sea lamprey populations in the Convention Area; and

(e) to publish or authorize the publication of scientific and other information obtained by the Commission in the performance of its duties.

ARTICLE V

In order to carry out the duties set forth in Article IV, the Commission may:

(a) conduct investigations;

(b) take measures and install devices in the Convention Area and the tributaries thereof for lamprey control; and

(c) hold public hearings in the United States of America and Canada.

ARTICLE VI

1. In the performance of its duties, the Commission shall, in so far as feasible, make use of the official agencies of the Contracting Parties and of their Provinces or States and may make use of private or other public organizations, including international organizations, or of any person.

2. The Commission may seek to establish and maintain working arrangements with public or private organizations for the purpose of furthering the objectives of this Convention.

ARTICLE VII

Upon the request of the Commission a Contracting Party shall furnish such information pertinent to the Commission's duties as is practicable. A Contracting Party may establish conditions regarding the disclosure of such information by the Commission.

ARTICLE VIII

1. Each Contracting Party shall determine and pay the expenses of its Section. Joint expenses incurred by the Commission shall be paid by contributions made by the Contracting Parties. The form and proportion of the contributions shall be those approved by the Contracting Parties after the Commission has made a recommendation.

2. The Commission shall submit an annual budget of anticipated joint expenses to the Contracting Parties for approval.

ARTICLE IX

The Commission shall submit annually to the Contracting Parties a report on the discharge of its duties. It shall make recommendations to or advise the Contracting Parties whenever it deems necessary on any matter relating to the Convention.

ARTICLE X

Nothing in this Convention shall be construed as preventing any of the States of the United States of America bordering on the Great Lakes or, subject to their constitutional arrangements, Canada or the Province of Ontario from making or enforcing laws or regulations within their respective jurisdictions relative to the fisheries of the Great Lakes so far as such laws or regulations do not preclude the carrying out of the Commission's duties.

ARTICLE XI

The Contracting Parties agree to enact such legislation as may be necessary to give effect to the provisions of this Convention.

ARTICLE XII

The Contracting Parties shall jointly review in the eighth year of the operation of this Convention the activities of the Commission in relation to the objectives of the Convention in order to determine the desirability of continuing, modifying or terminating this Convention.

ARTICLE XIII

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.

2. This Convention shall enter into force on the date of the exchange of the instruments of ratification. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either Contracting Party may, by giving two years' written notice to the other Contracting Party, terminate this Convention at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Convention.

DONE at Washington, in duplicate, this tenth day of September, 1954.

[Signatures omitted.]



SECTION IV

FISHERY TREATIES DEFINING FISHERY LIMITS

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FISHERY TREATIES DEFINING FISHERY LIMITS

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A. Exchanges of Notes (1954 and 1955) amending the Convention between the United Kingdom and Denmark for Regulating the Fisheries outside Territorial Waters in the Ocean surrounding the Faroe Islands of June 24, 1901

1. Articles 2, 4, and Additional Article, 1901 Convention

a. NOTE. The text of the 1901 Convention is printed in *U.N. Leg. Series I*, (1951), at page 232 *et seq.*, and was taken from Volume 23, *Hertslet's Commercial Treaties*, page 425. By a Note of 30 October 1949, the Foreign Ministry of Iceland served notice of termination, so far as Iceland is concerned, to the United Kingdom. Under Article 39, the Convention continues in force for two years after the notice. The note is printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, page 699. Articles 2, 4, and Additional Article are reproduced here from *U.N. Leg. Series I*, (1951), pages 232, 233, and 238.

* * * * *

b. ARTICLES 2, 4, AND ADDITIONAL ARTICLE, 1901 CONVENTION

* * * * *

ARTICLE 2. The subjects of His Majesty the King of Denmark shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of the said islands, as well as the dependent islets, rocks, and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles.

The present article shall not prejudice the freedom of navigation or anchorage in territorial waters accorded to fishing boats, provided they conform to the Danish police regulations ruling this matter, amongst others the one stipulating that trawling vessels, while sojourning in territorial waters, shall have their trawling gear stowed away in-board.

* * * * *

ARTICLE 4. The geographical limits for the application of the present Convention shall be fixed as follows:

On the south by a line commencing from where the meridian of North Unst Lighthouse (Shetland Islands) meets the parallel of 61st degree of north latitude to a point where the 9th meridian of west longitude meets the parallel of 60° north latitude, and

from thence westward along that parallel to the meridian of 27° west longitude.

On the west by the meridian of 27° west longitude.

On the north by the parallel of 67° 30' of north latitude.

On the east by the meridian of the North Unst Lighthouse.

The aforesaid limits are shown on the chart appended to the present Convention.

* * * * *

ADDITIONAL ARTICLE. Any other government, the subjects of which carry on fishery in the ocean surrounding the Farøe Islands and Iceland, may adhere to the present Convention. The adhesion shall be notified to one of the Governments at Copenhagen or at London respectively. Such notification shall be communicated to the other Signatory Power.

* * * * *

2. Exchanges of Notes (1954 and 1955)

a. NOTE. The Notes became effective 23 July 1954 and 1 July 1955, respectively. The texts reprinted below are taken from *British Command Paper* No. 9457.

* * * * *

b. EXCHANGES OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF DENMARK AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM AND DENMARK FOR REGULATING THE FISHERIES OUTSIDE TERRITORIAL WATERS IN THE OCEAN SURROUNDING THE FAROE ISLANDS OF JUNE 24, 1901

London, July 23, 1954 and April 22, 1955

No. 1 (a)

The Danish Ambassador at London to Her Majesty's Principal Secretary of State for Foreign Affairs

**Royal Danish Embassy,
London, July 23, 1954.**

Sir,

I have the honour to refer to the Convention between Denmark and the United Kingdom of Great Britain and Northern Ireland, signed in London on June 24, 1901,¹ for regulating the fisheries of their respective subjects outside territorial waters in the Ocean surrounding the Faroe Islands and, in concert with the local

¹ *Treaty Series* No. 5 (1903), Cd. 1530.

administration of the Faroe Islands, to propose on behalf of the Danish Government that the Additional Article of the Convention providing for adhesion thereto shall be abrogated with effect from to-day.

2. If this proposal is acceptable to Her Majesty's Government in the United Kingdom, I have the honour to suggest that the present Note and your Excellency's reply to that effect should be regarded as constituting an agreement between our two governments.

I have, etc.,

STEENSEN-LETH

No. 1 (b)

**Her Majesty's Principal Secretary of State for Foreign Affairs to
the Danish Ambassador at London**

Foreign Office, S.W. 1.

July 23, 1954.

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of to-day's date which reads as follows:—

[As in No. 1 (a).]

I have the honour to inform you that the foregoing proposal is acceptable to the Government of the United Kingdom and that they will regard your Note and this reply as constituting an agreement between the two governments abrogating, with effect from to-day, the Additional Article of the Convention signed in London on the 24th of June, 1901.

I have, etc.,

(For the Secretary of State).

H.A.F. HOHLER

No. 2 (a)

**The Danish Chargé d'Affaires at London to Her Majesty's Principal
Secretary of State for Foreign Affairs**

Royal Danish Embassy,

London, April 22, 1955.

Sir,

I have the honour to refer to the discussions between representatives of our two Governments, relating to the Convention between Denmark and the United Kingdom for regulating the fisheries outside territorial waters in the ocean surrounding the Faroe Islands, signed in London on the 24th of June, 1901. Following

upon these discussions, the Government of Denmark, in concert with the local administration of the Faroe Islands, propose to the Government of the United Kingdom of Great Britain and Northern Ireland to modify the said Convention in the following respects.

2—A. The limits within which Faroe Islanders and other Danish citizens shall enjoy the exclusive right of fishery shall be defined as indicated below; all the arcs mentioned are to be drawn at a radius of three miles from low water mark of the islands or off-lying rocks (drying); all geographical positions are taken from the Danish chart No. 80, edition of 1905, (corrected to 1953).

North Coast

From the arc centred on the rock close north of Myling along the common tangent to that arc and the arc round Rívtange. From the intersection of this tangent with the common tangent between the arcs round Rívtange and Kádlur, the limit runs along the tangent, thence following the arc off Kádlur, thence along the common tangent to the arc off Kádlur and the arc off the outermost drying rock off Enniberg. Along the arc round Enniberg and the common tangent between this arc and that round Nórðberg in Fuglø. Thence along the arc round Nórðberg and along the common tangent between that arc and that off the north east point of Fuglø.

East Coast

Along the arc round the north east point of Fuglø, to its intersection with the arc round Bíspen, thence along that arc and the common tangent to this arc and that round the most easterly point of Svinø. Thence along the arc round the most easterly point of Svinø and the common tangent between it and the arc round the south easterly point of Svinø. Along the arc round the south easterly point of Svinø, and the common tangent between it and the arc round Skoren. From the intersection of this tangent and the common tangent between the arcs round Skoren and round the eastern point of Nolsø the limit is formed by this tangent, until its intersection with the common tangent between the arc round the eastern point of Nolsø and the arc round the eastern Fleserne, thence along this common tangent. Thence along the arc round the eastern Fleserne to its intersection with the arc round the Munken rock.

West Coast

Along the arc round the Munken rock and along the common

tangent between this arc and the arc round the south western islet off Famarasund. Thence along the latter arc and the common tangent between that arc and the arc round Bergstange. Thence along the arc round Bergstrange and along the common tangent between that arc and the arc round Kobbetange to a position 61 degrees 35.0 minutes north, 7 degrees 04.9 minutes west, which is 247 degrees 3.05 miles from Kobbetange. From this position the limit follows a straight line to a position 61 degrees 51.5 minutes north, 7 degrees 23.4 minutes west, which is 253½ degrees, 13.1 miles from the northern point of Trolldhoved off Sando. Thence as a straight line to the position on the arc round the outermost rock off Myggænaes at 62 degrees 03.9 minutes north, 7 degrees 45.95 minutes west, which is 236 degrees 3.3 miles from Myggænaes lighthouse. Then the limit follows the arcs round the rocks off Holm at the western end of Myggænaes.

North West Coast

From the arc round the most northerly rock off Holm along the tangent to this arc which passes through the rock close north of Myling (not the arc round this rock) to a distance of three miles from the west coast of Stromo. Thence as a tangent from this position to the arc round the rock close north of Myling and continuing round that arc to the common tangent to that arc and the arc round Rivtange.

B. The Danish Government intend that the fishery limits indicated above shall be applied to all foreign fishing vessels. British fishing vessels shall receive treatment no less favourable than that accorded to the fishing vessels of any other foreign country.

3. If the proposals contained in this Note are acceptable to the Government of the United Kingdom, I suggest that this Note, and your reply to that effect, should be regarded as constituting an Agreement between our two Governments modifying the Convention of the 24th of June, 1901, accordingly.

4. I further suggest that the modifications to the said Convention thus agreed upon shall enter into effect on the 1st of July, 1955.

5. Finally, I suggest that the Convention, as modified by the Exchange of Notes of the 23rd of July, 1954, and by your Government's acceptance of the proposals in this Note, shall remain in force for ten years before becoming subject to the provisions for denunciation contained in Article XXXIX of the said Convention.

I have, etc.,

E. KNUTH

No. 2 (b)

Her Majesty's Principal Secretary of State for Foreign Affairs to
the Danish Chargé d'Affaires at London

Foreign Office, S.W. 1.
April 22, 1955.

Sir,

I have the honour to acknowledge receipt of your Note of to-day's date which reads as follows:—

[As in No. 2(a).]

I have the honour to inform you that the foregoing proposals are acceptable to the Government of the United Kingdom and that they will regard your Note and this reply as constituting an agreement between our two Governments, modifying the Convention of the 24th of June, 1901, accordingly.

I have, etc.,

HAROLD MACMILLAN

B. Fisheries Agreement Between the United Kingdom and the Union of Soviet Socialist Republics Together with Minute to Article 1 and Exchange of Notes on Territorial Waters (1956)

1. NOTE. The Agreement was signed at Moscow, 25 May 1956. Ratifications were exchanged on March 12, 1957 (*Cmnd.* 148, *Treaty Series* No. 36, 1957). The texts below are taken from *British Command Paper* No. 9778. A previous Agreement of 1930, which expired in July 1955, provided a larger area for British fishermen. *The New York Times*, 26 May 1956, page 2, col. 4. A "temporary" Agreement of 22 May 1930, indicating the larger area, is printed in *U.N. Leg. Series I* (1951), page 174.

* * * * *

2. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics on Fisheries

Moscow, May 25, 1956

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Soviet Socialist Republics have decided to conclude the present agreement and have appointed their Representatives:—

[Names omitted.]

Who, having exchanged full powers which have been found to be in good order and due form, have agreed on the following:—

ARTICLE 1

The Government of the Union of Soviet Socialist Republics agree to concede the right to fishing boats registered at the ports of the United Kingdom to fish in the waters in the Barents Sea along the coast of the Kola Peninsula between the meridians thirty-six degrees and thirty-seven degrees fifty minutes of East longitude, along the mainland to the East of the point of Cape Kanin between the meridians forty-three degrees seventeen minutes and fifty-one degrees of East longitude and also along the coast of Kolguev Island, up to a distance of three sea miles from low water mark both on the mainland and on the islands; the right is also conceded to these boats to sail freely and to anchor in these waters.

ARTICLE 2

United Kingdom fishing boats entering Soviet ports and sheltered waters in extraordinary circumstances will be governed by the regulations laid down by the competent Soviet authorities.

ARTICLE 3

The present Agreement is subject to ratification. The exchange of the instruments of ratification shall take place as soon as possible in London.

The Agreement has been concluded for a period of five years and shall enter into force from the date of the exchange of the instruments of ratification.

If neither of the parties has given notice of denunciation not later than one year before the termination of the above period in which the Agreement is in force, the Agreement will remain in force for a further five years and thus each time it will be considered to have been extended for a further five years unless one of the parties denounces it not later than one year before the termination of the current five-year period in which it is in force.

Done at Moscow on the 25th day of May, 1956, in duplicate, both in the English and Russian languages, and both texts being equally authoritative.

[Signatures omitted.]

* * * * *

Minute to Article 1 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics on Fisheries of May 25, 1956.

The permission given by the Government of the Union of Soviet Socialist Republics to fishing vessels registered at the United

Kingdom ports to engage in fishing, to navigate freely and anchor in the waters indicated in Article 1 of the Agreement shall not be considered to concede to such fishing vessels the right to engage in fishing, to navigate and anchor in such forbidden zones as may be established by the competent Soviet authorities inside the limits of the waters coming within the scope of the agreement.

[Signatures omitted.]

* * * * *

EXCHANGE OF NOTES ON TERRITORIAL WATERS

No. 1

**Her Majesty's Ambassador at Moscow to the Soviet Union Deputy
Minister of Foreign Affairs**

**British Embassy,
Moscow, May 25, 1956.**

Mr. Deputy Minister,

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, signed this day at Moscow, for regulating the fishing activities of fishing boats registered in the ports of the United Kingdom in the waters contiguous to the Northern coasts of the Union of Soviet Socialist Republics and the Islands dependent thereon, and to inform your Excellency that it is the understanding of the Government of the United Kingdom that nothing in this Agreement shall be deemed to prejudice the claims or views of either Contracting Government in regard to the limits of territorial waters.

I have the honour to suggest that the present Note and your Excellency's reply thereto shall be regarded as an official expression of the points of view of the two Governments on this matter.

W. HAYTER

No. 2

[Translation from the Russian text]

**The Soviet Union Deputy Minister of Foreign Affairs to Her
Majesty's Ambassador at Moscow**

Moscow, May 25, 1956.

Mr. Ambassador,

Taking into consideration the view of the British Government, expressed in your Excellency's Note of today's date, that no pro-

visions contained in the Agreement on Fisheries signed to-day in Moscow between the Government of the Union of Soviet Socialist Republics and the Government of the United Kingdom of Great Britain and Northern Ireland shall be deemed to prejudice the claims or views of the Contracting Parties concerning the limits of territorial waters, I have the honour to remind you that the width of the Soviet Union's territorial waters and the regulations governing them were defined in the Statute concerning the Security of the State Frontiers of the Union of Soviet Socialist Republics of June 15, 1927.

With this I have the honour to confirm that your Excellency's Note and the present answer shall be regarded as an official expression of the points of view of the two Governments on this question.

V. KUZNETSOV

* * * * *

C. Other Recent Similar Treaties

NOTE. An Agreement concerning Fisheries, 13 April 1949, between Italy and Yugoslavia, contains provisions defining Yugoslav fishing zones in which Italians may fish and also contains provisions setting quotas in the interest of conservation. The additional 4 mile fishing zone beyond territorial waters claimed by Yugoslavia (see Yugoslavia, *infra*) is included within the zones in which Yugoslavia grants permission to fish. The Agreement entered into force 1 May 1949, and Article 13 provides it shall remain in force for two years and continued by "tacit agreement in each year" unless denounced by either country with four months' notice. The text of the Agreement is printed in *U. N. Leg. Series I*, (1951), page 241. A letter to the Editor from the Acting Director, Fisheries Division, Food and Agriculture Organization of the United Nations, dated 28 August 1956, enclosed the original French text of a new fishery Treaty between Italy and Yugoslavia, concluded on 1 March 1956. The letter states it is understood that "although this agreement has not yet been ratified by the Italian Parliament, it is already being applied informally." The new Treaty provides in annexed letter No. 1 that it shall be effective immediately for the fishing season already under way. The new Treaty adds new fishing zones with somewhat different limits. Its provisions, in general, are similar to the 1949 Treaty, but it makes no reference to that treaty.

An Agreement regarding Rights of Fishery in the areas of the English Channel Islands of Ecrehos and Minquiers, signed at London 30 January 1951, became effective on 24 September 1951, when ratifications were exchanged at Paris. This Agreement, between the United Kingdom and France, defined fishery limits without prejudice to the forthcoming decision of the International Court of Justice as to sovereignty over the Ecrehos and Minquiers. The text of the agreement is to be found in *British Command Paper* No. 8444. The Judgment of the International Court of Justice of 17 November 1953 in *The Ecrehos and Minquiers Case* awarded sovereignty of both groups of islands to the United Kingdom largely on the basis of historical evidence. *International Court of Justice Reports*, 1953, page 47 *et seq.*

SECTION V

TREATY ON CONTINENTAL SHELF AND SUPPLEMENTARY LEGISLA- TION

SECTION V

TREATY ON CONTINENTAL SHELF AND SUPPLEMENTARY LEGISLATION

A. Note on United Kingdom-Venezuela Treaty (1942) with Summary and Excerpts

NOTE. The greatest part of the development of the doctrine of the Continental Shelf is traceable to national legislation. Claims since 1950 are collected, *infra*, Section VI. The early national claims to the Continental Shelf are reprinted in U. S. Naval War College, *International Law Documents, 1948-49* (1950) at pages 182-196. National claims through 1950 are also collected in *U.N. Leg. Series I*, (1951), pages 3-47. Included in this latter collection is the earliest important document on this subject, the Treaty, between the United Kingdom and Venezuela, relating to the Submarine Areas of the Gulf of Paria, 26 February 1942, *Ibid.*, page 44, taken from *British Command Paper* No. 6400. The United Kingdom national legislation carrying out this Treaty is printed in the same collection at page 46.

The 1942 Treaty, *supra*, contains a preamble and nine articles. Article 1 defines "submarine areas of the Gulf of Paria" as "the sea-bed and sub-soil outside of the territorial waters of the High Contracting Parties to one or the other side of the lines A-B, B-Y and Y-X". Article 3 defines the area within the lines mentioned. Article 2 divides the claims of the two governments in the defined area. Article 4 provides for a mixed Commission to mark the respective boundaries. Article 5 provides: "This Treaty refers solely to the submarine areas of the Gulf of Paria, and nothing herein shall be held to affect in any way the status of the islands, islets or rocks above the surface of the sea together with the territorial waters thereof". Article 6 provides in the first sentence: "Nothing in this Treaty shall be held to affect in any way the status of the waters of the Gulf of Paria or any rights of passage or navigation on the surface of the seas outside the territorial waters of the contracting parties". The second sentence of Article 6 provides that any installations shall not be a danger or obstruction to shipping. Article 7 provides for cooperation in practical measures to prevent pollution. Article 8 requires insertion in any concession of provisions to ensure compliance with Articles 6 and 7, and for supervision of operations to the same purpose. Article 9 provides for peaceful solution of disputes. The quotations above are taken from the text printed in *U. N. Leg. Series I*, (1951), pages 44-46.

SECTION VI

**NATIONAL LEGISLATION, UNILAT-
ERAL CLAIMS CONCERNING THE
HIGH SEAS, THE TERRITORIAL
SEA, THE CONTINENTAL SHELF,
AND FISHERIES. REPRESENTATIVE
PROTESTS BY OTHER STATES**

SECTION VI

NATIONAL LEGISLATION, UNILATERAL CLAIMS CONCERNING THE HIGH SEAS, THE TERRITORIAL SEA, THE CONTI- NENTAL SHELF, AND FISHERIES. REPRESENTATIVE PRO- TESTS BY OTHER STATES

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A. THE UNITED STATES



A. The United States

I. The Continental Shelf

a. INTRODUCTORY NOTE. Presidential Proclamation No. 2667 of 28 September 1945, concerning the Continental Shelf was the first unilateral claim to attract widespread attention and imitation, spurious or otherwise. Although the text is printed in N.W.C., *I.L. Documents, 1948-49*, page 183, it is reprinted below for convenience of reference. It has also been published in *U.N. Leg. Series I* (1951), page 38; *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 747; and 40 *A.J.I.L., Supp.*, 1946, page 45. Executive Order No. 9633 of 28 September 1945, placing control of the Continental Shelf in the Secretary of the Interior, is printed in *Ibid.*, page 41; *Ibid.*, III, page 748; and *Ibid.*, page 47, as well as in N.W.C., *I.L. Documents 1948-49*, page 184. Relevant extracts from the accompanying Press Release are printed in *U.N. Leg. Series I* (1951), page 39. For comment on the Shelf Proclamation, see Bibliographical Note, *supra*.

The Submerged Lands Act of 1953, 67 Stat. 29, and the Outer Continental Shelf Lands Act of 1953, 67 Stat. 462, are reprinted in 48 *A.J.I.L., Supp.*, 1954, pages 104 and 110. The two Acts, as reproduced below, are taken from that source.

In *Alabama v. Texas, et al.*, and *Rhode Island v. Louisiana, et al.*, 347 U.S. 272 (1954), Alabama and Rhode Island moved to file a complaint against the States receiving off-shore resources under the Submerged Lands Act, and challenged the constitutionality of that Act. The motion was dismissed *Per Curiam*, the Chief Justice not participating, Justice Reed concurring, and Justices Black and Douglas dissenting.

The States of California, Louisiana and Texas had made claims which were involved in litigation prior to the two Acts, *supra*. See *U.S. v. Louisiana*, 339 U.S. 699 (1950); *U.S. v. Texas*, 339 U.S. 707 (1950); and *U.S. v. California*, 332 U.S. 19 (1947).

Section 2(b) of the Submerged Lands Act provides that the seaward "boundaries" of a State of the United States shall not extend more than three miles into the Pacific or Atlantic Oceans or more than three leagues into the Gulf of Mexico. Litigation between the United States and Louisiana, concerning a dispute over conflicting claims as to the proper "boundary" is pending in the Supreme Court of the United States. By an Order of 11 June 1956, the Supreme Court enjoined any other suits by parties acting in Louisiana's interest, and enjoined the United States and Louisiana from making new leases or starting new drilling in the disputed areas, unless the parties reach agreement, pending the final determination of the controversy by the Supreme Court. Such an agreement was signed by Louisiana and the United States on October 12, 1956, and permits the resumption of activity, with impounding of the proceeds from disputed areas. *The New York Times*, 13 October 1956, p. 25, col. 3. The Chief Justice did not participate in the Order.

76 *Supreme Court Reporter* 1043 (1956), and earlier Order at page 842 thereof. On 24 June 1957, the Supreme Court, *Per Curiam*, authorized intervention in the litigation by the States of Alabama, Florida, Mississippi, and Texas. Pending motions of the United States and Louisiana were continued. 77 *Supreme Court Reporter* 1373 (1957). The Chief Justice and Mr. Justice Clark did not participate.

The Texas Act of 16 May 1941, as amended 23 May 1947, appears in *U.N. Leg. Series I* (1951) page 41, with a Note giving the original text, and references to comments on the legislation by the Supreme Court. The 1941 Act claimed 27 miles, and the 1947 amendment extended the claim to the outer limits of the Continental Shelf. Louisiana Act No. 55 of 30 June 1938, is printed in *Ibid*, page 114, with a Note referring to comments on the legislation by the Supreme Court. The Louisiana Act claimed 27 miles. California in Article XXI of its Constitution claimed the 3 mile belt for itself. *Constitution of California and other Documents*, Mason, California State Printing Office, 1945, page 202. Article 12 of the 1849 California Constitution, making a similar claim, is reprinted in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 742.

A Note of 29 February 1956 from the Secretary of State of the United States to the United Nations states, in part: "* * * So far as concerns the references to the laws of California, Louisiana, and Texas, these provisions cannot be regarded as being determinative at present of the regime of the territorial sea of the United States. The Submerged Lands Act of 1953 limits to three miles the distance to which the boundaries of coastal States of the Union may extend into the Atlantic Ocean or the Pacific Ocean. While the Act does not preclude States of the Union bordering on the Gulf of Mexico from establishing claims to more than three miles into the Gulf of Mexico, there has been no adjudication to date of any such claims. * * *"

* * * * *

b. PRESIDENTIAL PROCLAMATION, 28 SEPTEMBER 1945

(Proclamation No. 2667, 10 F.R. 12303)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon co-operation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources ;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON

Acting Secretary of State.

[SEAL]

* * * * *

c. UNITED STATES SUBMERGED LANDS ACT (1953) ¹

Approved May 22, 1953

AN ACT

To Confirm and Establish the Titles of the States to Lands Beneath Navigable Waters Within State Boundaries and to the Natural Resources Within Such Lands and Waters, to Provide for the Use and Control of Said Lands and Resources, and to Confirm the Jurisdiction and Control of the United States over the Natural Resources of the Seabed of the Continental Shelf Seaward of State Boundaries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act."

TITLE I

DEFINITION

SECTION 2. WHEN USED IN THIS ACT.—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no

¹ Pub. Law 31, 83rd Cong., 1st Sess. (H.R. 4198); 67 Stat. 29.

event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however*, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SECTION 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath

navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however*, that, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December

11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however,* That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SECTION 4. SEAWARD BOUNDARIES.—

The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the inter-

national boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SECTION 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—

There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SECTION 6. POWERS RETAINED BY THE UNITED STATES.—

(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which

shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SECTION 7.—Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SECTION 8.—Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SECTION 9.—Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SECTION 10.—Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf, as a Naval Petroleum Reserve," is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SECTION 11. SEPARABILITY.—If any provision of this Act, or

any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, or phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) of any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

Approved May 22, 1953.

* * * * *

d. OUTER CONTINENTAL SHELF LANDS ACT (1953) ²

Approved August 7, 1953

AN ACT

To Provide for the Jurisdiction of the United States Over the Submerged Lands of the Outer Continental Shelf and to Authorize the Secretary of the Interior to Lease Such Lands for Certain Purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act."

SECTION 2. DEFINITIONS.—WHEN USED IN THIS ACT—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) the term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

SECTION 3. JURISDICTION OVER OUTER CONTINENTAL SHELF.—

(a) It is hereby declared to be the policy of the United States

² Pub. Law 212, 83d Cong., 1st Sess. (H.R. 5134); 67 Stat. 462.

that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the water above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

SECTION 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for

the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

(c) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (c), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or a member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(d) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure.

(e) (1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor

and shall be fined not more than \$100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to artificial islands and fixed structures located on the outer Continental Shelf.

(g) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

SECTION 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—

(a) (1) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production.

(2) Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the pro-

tection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than \$2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense. The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6 (b), clause (2), hereof if the lease is maintained under the provisions of section 6 hereof.

(b) (1) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6 (b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in section 8 (j), if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(2) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6 (b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4 (b) of this Act.

(c) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power

Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of section 4 (b) of this Act.

SECTION 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—

(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this Act, or within such further period or periods as provided in section 7 hereof or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after the effective date of this Act, are paid to the Secretary,

who shall deposit such payments in the Treasury in accordance with section 9 of this Act;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on the effective date of this Act;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and the effective date of this Act and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on the effective date of this Act;

(10) such lease will terminate within a period of not more than five years from the effective date of this Act in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provi-

sions of paragraphs (8), (9) and (10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 5 of this Act prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however,* That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of such subsection (b) unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: *Provided further,* That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this Act: *Provided further,* That if the primary term of a lease being maintained under subsection (b) hereof has expired prior to the effective date of this Act and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from the effective date of this Act and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

(c) The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or respecting activities conducted under the lease, prior to the effective date of this Act.

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such

determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

SECTION 7. CONTROVERSY OVER JURISDICTION.—

In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this Act, the Secretary is authorized, notwithstanding the provisions of subsections (a) and (b) of section 6 of this Act, and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this Act. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 6 (a) (4) hereof upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this Act, the lessee, if he has not already done so, shall comply with the requirements of section 6 (a), and thereupon the provisions of section 6 (b) shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F.R. 8835), as amended by the notice dated January 26, 1951 (16 F.R. 953), and as supplemented by the notices dated February 2, 1951 (16 F.R. 1203), March 5, 1951 (16 F.R. 2195), April 23, 1951 (16 F.R. 3623), June 25, 1951 (16 F.R. 6404), August 22, 1951 (16 F.R. 8720), October 24, 1951 (16 F.R. 10998), December 21, 1951 (17 F.R. 43), March 25, 1952 (17 F.R. 2821), June 26, 1952 (17 F.R. 5833), and December 24, 1952 (18 F.R. 48), respectively, is hereby approved and confirmed.

SECTION 8. LEASING OF OUTER CONTINENTAL SHELF.—

(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than $12\frac{1}{2}$ per centum in amount of value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary.

(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than $12\frac{1}{2}$ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.

(c) In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(d) A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant

construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(e) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(f) Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(g) All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

(h) The issuance of any lease by the Secretary pursuant to this Act, or the making of any interim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(i) The Secretary may cancel any lease obtained by fraud or misrepresentation.

(j) Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action.

SECTION 9. DISPOSITION OF REVENUES.—

All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

SECTION 10. REFUNDS.—

(a) Subject to the provisions of subsection (b) hereof, when it appears to the satisfaction of the Secretary that any person has

made a payment to the United States in connection with any lease under this Act in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after the effective date of this Act. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized and directed to make such repayments out of any moneys in the special account established under section 9 of this Act and to issue his warrant in settlement thereof.

(b) No refund of or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: *Provided*, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress.

SECTION 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

SECTION 12. RESERVATIONS.—

(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) All leases issued under this Act, and leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary

of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are hereby reserved for the use of the United States.

(f) The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this Act, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas.

SECTION 13. NAVAL PETROLEUM RESERVE EXECUTIVE ORDER REPEALED.—

Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve," is hereby revoked.

SECTION 14. PRIOR CLAIMS NOT AFFECTED.—

Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this Act or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

SECTION 15. REPORT BY SECRETARY.—

As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.

SECTION 16. APPROPRIATIONS.—

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SECTION 17. SEPARABILITY.—

If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby.

Approved August 7, 1953.

2. Territorial Waters and Fisheries

a. INTRODUCTORY NOTE. Presidential Proclamation No. 2668, concerning fisheries, and the accompanying Executive Order No. 9634, both of 28 September 1945, are printed below. The Proclamation and Executive Order have also been published in *U.N. Leg. Series I* (1951), pages 112 and 113; 40 *A.J.I.L.*, *Supp.* 1946, pages 46 and 48; and the Proclamation in *I.C.J., Pleadings, 1951, U.K.-Norway*, II, page 252. The Legal Adviser of the Department of State has written as follows on the policy of the United States respecting fisheries as enunciated in the Proclamation: “* * * This [Proclamation] declares the policy of the United States on the establish-

ment of fishery conservation zones in the high seas contiguous to its coasts. Where such fishing activities are maintained by United States nationals alone, it regards it as proper that regulation be exercised by the United States exclusively. But when the fishing activities have been legitimately developed and maintained jointly by nationals of the United States and nationals of other States, conservation zones may be established by agreement between the United States and such other States. This proclamation has been misunderstood by some as implying a claim to exclusive fishing rights for United States nationals in the waters off its coasts. The proclamation asserts no such claim, and such is not the position of the United States. * * * Phleger, "Recent Developments Affecting the Regime of the High Seas," 32 *Department of State Bulletin* 934 (6 June 1955) at page 936. (Footnotes omitted.) For other comment on the Fisheries Proclamation, see Bibliographical Note, *supra*.

The United States has maintained that three miles is the legal limit of the territorial sea, except where larger claims could be justified on a historical basis. A/CN.4/99/Add. 1, page 82. The United States has, however, asserted the right to take certain exceptional measures beyond this limit. Examples of U.S. legislation asserting such claims are the U.S. Tariff Act, 17 June 1930, as amended, and the Anti-Smuggling Act, 5 August 1935, as amended. Relevant extracts from both Acts are printed in *U.N. Leg. Series I* (1951), pages 101 and 107. Phleger, *supra*, pages 934-35, characterizes the exceptions to the principle of the freedom of the seas as follows: " * * * Thus, it has long been recognized that a State may suppress piracy. It may seize a vessel flying its flag without authority. The right of hot pursuit is accepted. The enforcement, on the part of coastal States, of revenue and sanitary laws is recognized. Finally, in this modern age, the right of a State, for defense or security purposes, to take preventive measures on the high seas is in process of development. * * * " (Footnotes omitted.) A recent official statement of the United States position on the limits of territorial waters is contained in A/2934, page 45, at page 46, Note of 3 February 1955 from the Permanent Delegation of the United States to the United Nations, commenting on the draft articles on the territorial sea of the International Law Commission. Three paragraphs from this statement are quoted here in order to give the views of the United States on this question:

" * * * So far as concerns the question of the breadth of the territorial sea and the various suggestions set out in paragraph 68 of the report, the guiding principle of the Government of the United States is that any proposal must be clearly consistent with the principle of freedom of the seas. Some of the proposals amount to a virtual abandonment or denial of that principle. In this connexion, it must be pointed out that the high seas are an area under a definite and established legal status which requires freedom of navigation and use for all. They are not an area in which a legal vacuum exists free to be filled by individual States, strong or weak. History attests to the failure of that idea and to the evolution of the doctrine of the freedom of the seas as a principle fair to all. The regime of territorial waters itself is an encroachment on that doctrine and any breadth of territorial waters is in derogation of it, so the derogations must be kept to an absolute minimum, agreed to by all as in the interest of all.

"That the breadth of the territorial sea should remain fixed at three miles, is without any question the proposal most consistent with the principle of freedom of the seas. The three-mile limit is the greatest breadth of territorial waters on which there has ever been anything like common agreement. Everyone is now in agreement that the coastal State is entitled to a territorial sea to that distance from its shores. There is no agreement on anything more. If there is any limit which can safely be laid down as fully conforming to international law, it is the three-mile limit. This point, in the view of the Government of the United States, is often overlooked in discussions on this subject, where the tendency is to debate the respective merits of various limits as though they had the same sanction in history and in practice as the three-mile limit. But neither six nor nine nor twelve miles, much less other more extreme claims for territorial seas, has the same historical sanction and a record of acceptance in practice marred by no protest from other States. A codification of the international law applicable to the territorial sea must, in the opinion of the Government of the United States, incorporate this unique status of the three-mile limit and record its unquestioned acceptance as a lawful limit.

"This being established, there remains the problem of ascertaining the status of claims to sovereignty beyond the three-mile limit. The diversity of the claims involved bears witness, in the opinion of the Government of the United States to the inability of each to command the degree of acceptance which would qualify it for possible consideration as a principle of international law. Not only does each proposed limit fail to command the positive support of any great number of nations, but each has been strongly opposed by other nations. This defect is crucial and, in view of the positive rule of freedom of the sea now in effect in the waters where the claims are made, no such claim can be recognized in the absence of common agreement. A codification of the international law applicable to the territorial sea should, in the view of the Government of the United States, record the lack of legal status of these claims. * * *"

Other recent United States developments are referred to elsewhere in this book. Most of the Fishery Treaties to which the United States is a party are reprinted *supra*, Section III. Documents concerning United States participation in Inter-American Conferences appear, *supra*, Section II, C. The Chile-Ecuador-Peru Agreements, affecting United States interests, are printed, *supra*, Section II, D. The United States has made formal protests against certain claims of other States which are referred to in connection with the State concerned, *infra*. A typical Protest Note is printed under Chile, *infra*. Texts of United States Protest Notes to Chile, El Salvador, Saudi Arabia, Argentina, Peru, Egypt and Ecuador are collected in *I.C.J., Pleadings, 1951, U.K.-Norway*, IV, pages 599-604. Comments giving the United States viewpoint with respect to fisheries are in A/CN.4/99/Add. 1, pages 75-81; with respect to territorial waters, *Ibid.*, page 82, and A/2934, pages 45-46, partially quoted, *supra*, in this note; and with respect to the Continental Shelf, A/2456, page 70. See, also, A/CN.4/19, page 104.

As a result of seizures of American vessels on the high seas in areas claimed by other States as territorial waters, Congress, in 1954, passed an Act to protect the rights of vessels of the United States on the high seas and in

such claimed territorial waters of foreign countries, 68 Stat. 883, Public Law 680, approved 27 August 1954. The text is reproduced below from *U.S.C., Supp. III* (1952 Edition) (1956), page 633. Phleger, *supra*, page 937, stated that several claims for reimbursement under this Act were pending in May, 1955.

* * * * *

b. PRESIDENTIAL PROCLAMATION, 28 SEPTEMBER 1945

(Proclamation No. 2668, 10 F.R. 12304)

WHEREAS for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international cooperation in this field; and

WHEREAS such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

WHEREAS the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion; and

WHEREAS there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special rights and equities of the coastal State and of any other State which may have established a legitimate interest therein;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed, maintained jointly by nationals of the United States and

nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON

Acting Secretary of State.

[SEAL]

* * * * *

c. EXECUTIVE ORDER, 28 SEPTEMBER 1945

(Executive Order No. 9634, 10 F.R. 12305)

By virtue of and pursuant to the authority vested in me as President of the United States, it is hereby ordered that the Secretary of State and the Secretary of the Interior shall from time to time jointly recommend the establishment by Executive orders of fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, pursuant to the proclamation entitled "Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas," this day signed by me, and said Secretaries shall in each case recommend provisions to be incorporated in such orders relating to the administration, regulation and control of the fishery resources of and fishing activities in such zones, pursuant to authority of law heretofore or hereafter provided.

HARRY S. TRUMAN

THE WHITE HOUSE

September 28, 1945.

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d. PROTECTION OF VESSELS ON THE HIGH SEAS AND IN TERRITORIAL WATERS OF FOREIGN COUNTRIES—PUBLIC LAW 680, 27 AUGUST 1954

* * *

CHAPTER 25

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SECTION 1971. DEFINITION.—

For the purposes of this chapter the term “vessel of the United States” shall mean any private vessel documented or certificated under the laws of the United States.

SECTION 1972. ACTION BY SECRETARY OF STATE UPON SEIZURE OF VESSEL OF FOREIGN COUNTRY.—

In any case where—

(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

(b) there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country and to secure the release of such vessel and crew.

SECTION 1973. REIMBURSEMENT OF OWNER FOR FINE PAID TO SECURE RELEASE OF VESSEL AND CREW.—

In any case where a vessel of the United States is seized by a foreign country under the conditions of section 1972 of this title and a fine must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of the Treasury in the amount certified to him by the Secretary of State as being the amount of the fine actually paid.

SECTION 1974. INAPPLICABILITY OF CHAPTER TO CERTAIN SEIZURES.—

The provisions of this chapter shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any fishery convention or treaty to which the United States is a party.

SECTION 1975. ACTION BY SECRETARY ON CLAIMS FOR AMOUNTS EXPENDED BECAUSE OF SEIZURE.—

The Secretary of State shall take such action as he may deem appropriate to make and collect on claims against a foreign

country for amounts expended by the United States under the provisions of this chapter because of the seizure of a United States vessel by such country.

SECTION 1976. AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this chapter.

[Table of Contents and Citations omitted.]

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**B. SIGNIFICANT DEVELOPMENTS IN
OTHER COUNTRIES**



B. Significant Developments in Other Countries

1. Argentina

NOTE. Argentina was one of the first countries to make a claim to the continental shelf. Presidential Decree No. 1386 of 24 January 1944, concerning Mineral Reserves, Article 2, reads in part as follows: “* * * zones of the epicontinental sea of Argentina shall be deemed to be temporary zones of mineral reserves; * * *.” *U. N. Leg. Series I*, (1951), page 3. Presidential Decree No. 14,708 of 11 October 1946, concerning National Sovereignty over Epicontinental Sea and the Argentina Continental Shelf and basing itself on Article 2 of the 1944 Decree, states in Article 1: “It is hereby declared that the Argentine *epicontinental sea and continental shelf* are subject to the sovereign power of the nation;” (*italics supplied*). In Article 2 of the 1944 Decree, the claimed waters are declared to be unaffected for purposes of free navigation. *U. N. Leg Series I*, (1951), page 4; N. W. C., *I. L. Documents*, 1948-49, page 187; *I. C. J., Pleadings, 1951, U. K.-Norway*, II, page 254; 41 *A. J. I. L., Supp.*, 1947, page 11. The United States sent a Protest Note to Argentina with respect to this Decree on 2 July 1948. *U. N. Leg. Series I*, (1951), page 5; *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, page 601; A/CN.4/19, page 115. Argentine national legislation on territorial waters and fishing are printed in *U. N. Leg. Series I* (1951), page 51.

2. Australia

a. NOTE. There have been significant developments in Australia and the documentation thereof is too extensive to be reproduced here in full. Two Proclamations of the Governor-General of 10 September 1953, reprinted below, claim sovereign rights over the continental shelf off the coasts of Australian territory, and off the coasts of the Trusteeship Territory of New Guinea. Related legislation and proclamations define the extent of the continental shelf, and the zones for sedentary fisheries. Section 51(x) of the Commonwealth Constitution gives Parliament authority to legislate with respect to “Fisheries in Australian waters beyond territorial limits.” The Fisheries Act, 1952-3, the Pearl Fisheries Act, 1952-3, both as amended, and various Whaling Acts, *inter alia*, have exercised this authority.

The Fisheries Act, 1952-3, as amended, is typical. In Section 4, “Australian waters” is defined as: “(a) Australian waters beyond territorial limits; (b) the waters adjacent to a territory and within territorial limits; and (c) the waters adjacent to a territory, not being part of the Commonwealth, and beyond territorial limits; * * *.” “Proclaimed waters” are Australian waters specified by Proclamation in force under Section 7 of the Act. Section 7 also gives the Minister power to prohibit fishing in “proclaimed waters.” Section 9 confers licensing authority. Similar definitions of “Australian waters” appear in the Pearl Fishing Act, 1952-3, as amended. In the Whaling Act, 1935-1948, the definition is somewhat narrower. The Proclamations and the fishery developments are discussed in detail in Goldie, “Australia’s Continental Shelf: Legislation and Proclamations,” 3 *I. C. L. Q.*

(1954), page 535 (with map showing claims at pages 536–37), and O'Connell, "Sedentary Fisheries and the Australian Continental Shelf," 49 *A. J. I. L.* (1955), page 185. In A/2934, page 25, the Australian Mission to the United Nations stated that Australia preferred not to comment on International Law Commission drafts in view of the pending dispute between Japan and Australia, which the governments concerned were considering submitting to the International Court of Justice for solution. The texts of the Proclamations are taken from 48 *A. J. I. L., Supp.*, 1954, pages 102–103.

* * * * *

b. PROCLAMATION, CONTINENTAL SHELF, AUSTRALIA ¹

(10 September 1953)

Commonwealth of
Australia to wit.
W.J. Slim
Governor-General

By His Excellency the
Governor-General in and
over the Commonwealth of
Australia

WHEREAS International Law recognizes that there appertain to a coastal State or territory sovereign rights over the sea-bed and subsoil of the continental shelf contiguous to its coasts for the purpose of exploring and exploiting the natural resources of that sea-bed and subsoil:

And whereas it is desirable to declare that Australia has those sovereign rights over the sea-bed and subsoil of the continental shelf contiguous to any part of the coasts of certain territories under its authority:

Now therefore I, Sir William Joseph Slim, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby declare that Australia has sovereign rights over the sea-bed and subsoil of—

- (a) the continental shelf contiguous to any part of its coasts; and
- (b) the continental shelf contiguous to any part of the coasts of territories under its authority other than territories administered under the trusteeship system of the United Nations,

for the purpose of exploring and exploiting the natural resources of that sea-bed and subsoil:

And I further declare that nothing in this Proclamation affects—

- (a) the character as high seas of waters outside the limits of territorial waters; or
- (b) the status of the sea-bed and subsoil that lie beneath territorial waters.

¹ *Commonwealth of Australia Gazette*, Sept. 11, 1953, No. 56.

Given under my Hand and the Seal of the Commonwealth of Australia this tenth day of September, in the year of (L.S.) our Lord, One thousand nine hundred and fifty-three, and in the second year of Her Majesty's reign.

By His Excellency's Command,

ROBERT G. MENZIES
Prime Minister
God Save the Queen!

* * * * *

**c. PROCLAMATION, CONTINENTAL SHELF, TERRITORY OF
NEW GUINEA**

(10 September 1953)

Commonwealth of
Australia to wit.

W. J. SLIM
Governor-General

By His Excellency the Governor-
General in and over the Com-
monwealth of Australia

WHEREAS International Law recognizes that there appertain to a coastal state or territory sovereign rights over the sea-bed and subsoil of the continental shelf contiguous to its coasts for the purpose of exploring and exploiting the natural resources of that sea-bed and subsoil:

And whereas it is desirable to declare that those sovereign rights exist in respect of the Territory of New Guinea:

And whereas the Territory of New Guinea is administered by the Government of Australia under the trusteeship system of the United Nations:

Now therefore I, Sir William Joseph Slim, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby declare that sovereign rights exist over the sea-bed and subsoil of the continental shelf contiguous to any part of the coasts of the Territory of New Guinea for the purpose of exploring and exploiting the natural resources of that sea-bed and subsoil:

And I further declare that those rights are exercisable by the Government of Australia as the Administering Authority of the Territory of New Guinea:

And I also declare that nothing in this Proclamation affects—

- (a) the character as high seas of waters outside the limits of territorial waters; or
- (b) the status of the sea-bed and subsoil that lie beneath territorial waters.

Given under my Hand and the Seal of the Commonwealth of

Australia this tenth day of September, in the year of our
(L.S.) Lord, One thousand nine hundred and fifty-three, and in
the second year of Her Majesty's reign.

By His Excellency's Command,

ROBERT G. MENZIES

Prime Minister

God Save the Queen!

3. Brazil

a. NOTE. Presidential Decree No. 28,840, integrating into national territory the adjoining part of the continental shelf, of 8 November 1950, is printed in *U. N. Leg. Series I* (1951), page 299. The text of the Decree, omitting the preamble, as there translated, is reproduced below. A French translation appears in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 661. In a Note from Brazil to Norway, it is stated that 3 miles is their territorial water limit, and that 12 miles for fishing is a contiguous zone. *Ibid.*, III, page 661. Other related Brazilian legislation, in French translation, may be found, *Ibid.*, III, pages 659-662. Comments by Brazil on various drafts of the International Law Commission appear in A/CN.4/99, page 13; A/2934, page 26; and A/2456, page 43.

* * * * *

b. PRESIDENTIAL DECREE NO. 28,840, 8 NOVEMBER 1950 (EXCERPTS)

* * * * *

ARTICLE 1. It is formally proclaimed that part of the continental shelf which adjoins (*correspondente*) the continental and insular territory of Brazil is integrated into that territory, under the exclusive jurisdiction and dominion of the Federal Union.

ARTICLE 2. The utilization and exploration of products or natural resources of that part of the national territory shall be subject in all cases to federal authorization or concession.

ARTICLE 3. The rules governing navigation in the waters covering the aforesaid continental shelf shall continue in force without prejudice to any further rules which may be made, especially as regards fishing in that area.

* * * * *

4. Bulgaria

a. NOTE. A Decree-Law concerning territorial waters of 25 August 1935 is printed in *U. N. Leg. Series I*, (1951), page 53. Article 1 thereof claimed 6 miles as the extent of territorial waters. A Decree of 10 October 1951, reprinted below, claims in Article 1 territorial waters of 12 miles. By Article 17 thereof, the Decree of 1951 supersedes the Decree Law of 1935. The text of what appears to be the 10 October 1951 Decree, as translated, is printed in 46 *A. J. I. L., Supp.*, (1952), page 67. The text of the 10 October 1951 Decree, No. 514, reprinted below, was translated by the United Nations Secretariat, and is substantially the same as that in the *American Journal*

except for Article 3. Article 3 (Section 3) in the *American Journal of International Law* translation reads as follows: "For the security of the country, the Council of Ministers may close, by decree, individual zones of the territorial waters of the Republic to all navigation." Articles 16 and 17 are omitted. There is also a difference in the third paragraph of Article 10, which in the *A. J. I. L.* version refers to Article 9, and in the U. N. text to article 8. The *A. J. I. L.* reading is believed to be the correct one. There is a note discussing the significance of this Decree by Pundeff in 46 *A. J. I. L.* (1952), page 330. A letter of October 3, 1956, from the Counselor of the Royal Swedish Embassy to the Editor, confirms that Sweden sent Bulgaria a Note of Protest concerning this claim of 12 miles.

* * * * *

b. DECREE OF 10 OCTOBER 1951 CONCERNING THE TERRITORIAL AND INLAND WATERS OF THE PEOPLE'S REPUBLIC OF BULGARIA ²

1. The territorial waters of the People's Republic of Bulgaria extend into the open sea to a distance of twelve miles from the water-line on the mainland and island coasts, from the furthest-most points of port installations and from the boundary of inland waters.

A nautical mile is equal to 1,852 metres.

2. The sea between the coast and a straight line drawn, in the case of Stalin Bay, from Cape Saint Constantine to Cape Ilandzhik and, in the case of Burgas Bay, from Cape Emine to the Cape of Olives (Zeytin Burun) is deemed to be part of the inland waters of the People's Republic of Bulgaria.

3. The belt of territorial waters extending three miles from the territory of the People's Republic constitutes the maritime frontier zone of the People's Republic of Bulgaria.

4. The line of demarcation between the territorial waters of the People's Republic and those of neighbouring States is the geographic parallel extending from the point at which the land frontier meets the coast.

5. The inland and territorial waters of the People's Republic, as well as the air space above them and the sea-bed and subsoil beneath them, are part of the territory of the People's Republic and are subject only to its laws.

6. The People's Republic of Bulgaria exercises sovereignty over the territorial waters referred to in article 5 in accordance with existing laws, the rules of international law and treaties and agreements concluded with other States.

7. The ports of Stalin and Sozopol are declared closed to navigation by foreign ships.

Other ports of the People's Republic of Bulgaria may be declared

² Translation by the Secretariat of the United Nations.

closed to navigation by foreign ships by order of the Council of Ministers.

8. A foreign ship other than a naval ship may without restriction pass through or stop or anchor in the territorial and inland waters of the People's Republic, other than the waters of the maritime frontier zone, or enter ports which are not closed to navigation by foreign ships, when it does so on its regular course or when compelled to do so by damage or storm.

Such ships shall be permitted to pass through inland waters solely for the purpose of entering or leaving ports at the places designated by the port authorities.

A foreign ship other than a naval ship may, if endangered by a severe storm, request permission to enter one of the bays and ports southwest of Cape Kaliakra or Cape Emine, where it may remain only for the duration of the storm.

9. A foreign naval ship may not pass through or stop or anchor in the territorial and inland waters of the People's Republic or enter ports which are not closed to navigation by foreign ships except with the prior authorization of the Government of the People's Republic of Bulgaria or in the event of damage or when seeking shelter from a storm.

10. No foreign submarine vessel of any kind may navigate, stop, lie on the bottom or anchor while submerged in the territorial or inland waters of the People's Republic.

Any submarine vessel found submerged in the territorial or inland waters of the People's Republic shall be pursued and destroyed without warning, and no liability for the consequences shall be incurred.

The provisions of article 8 [article 9(?)] shall apply in the case of submarine vessels navigating on the surface.

11. Foreign ships may not engage, while in the territorial or internal waters or ports of the People's Republic, in sounding, research, study, photography, naval exercises, firing or other similar activities, or make use of radio transmitters, radar, echosounding or like devices other than those intended for purposes of navigation. Such ships shall comply strictly with established international rules, the laws of the People's Republic of Bulgaria and the regulations made thereunder by the competent Government authorities for the preservation of the social order, security, sanitary requirements and fiscal interests of the People's Republic.

The use of radio transmitters shall be permitted only in the case of damage or to save the lives of shipwrecked persons, and depth-sounding, in the immediate vicinity of the ship, shall be permitted only if the vessel runs aground.

12. Any foreign ship which within the zone of the territorial and inland waters violates the laws of the People's Republic, the rules and regulations made thereunder or established international rules, treaties and agreements relating to navigation, shall be requested by the competent maritime frontier guard unit or by the port authorities, by means of established international signals or a warning shot, to leave the territorial waters of the People's Republic.

13. A foreign naval ship which does not comply with a signal requesting it to leave the territorial waters of the People's Republic may be fired on and no liability for the consequences shall be incurred.

14. A foreign ship other than a naval ship which commits a serious offence (such as the illicit import or export of goods, or the concealing of persons without documents or persons sought by the authorities) or fails to comply with a signal requesting it to leave the territorial waters of the People's Republic may be detained by the competent maritime frontier guard unit with a view to the prosecution of the offenders or the payment of the dues and fines prescribed by law.

A ship which fails to comply with a requirement and attempts to take refuge on the high seas may be pursued with a view to seizure by maritime frontier guard units without interruption to the boundary of the territorial waters of another State.

15. No charge shall be levied upon foreign naval ships which are authorized to pass through the territorial waters or to enter the ports of the People's Republic, except for specific services rendered.

* * * * *

Done at Sofia on 10 October 1951, as No. 514, and sealed with the State seal.

5. Canada

NOTE. The Canadian Government has recently announced an important change of position with respect to the breadth of the territorial sea and the method of measuring base lines, which it proposed to espouse at the 1956 Session of the General Assembly. The proposal is that by means of international agreement, Canada would extend her territorial waters to 12 miles, and would measure the base lines from headland to headland instead of from the main coast line as heretofore. Historic fishing rights of other countries would be respected. *The New York Times*, 5 August 1956, page 45, column 1. The debate on which the article was based is contained in *House of Commons Debates*, Volume 98, No. 139, 3rd Session, 22nd Parliament, 30 July 1956, pages 6700-6703.

The Coastal Fisheries Protection Act, assented to on 31 March 1953,

Canadian Statutes, 1952-3, Chapter 15, contains the following definition in Section 2:

“2(b) : ‘Canadian territorial waters’ means any waters designated by any Act of the Parliament of Canada or by the Governor in Council as the territorial waters of Canada, or any waters not so designated being within three marine miles of any of the coasts, bays, creeks, or harbours of Canada, * * *.”

Canada’s comments to the International Law Commission with respect to the draft articles on fisheries appear in A/CN.4/99/Add. 7.

6. Chile

a. NOTE ON CLAIMS AND PROTESTS. The tripartite claims of Chile-Ecuador-Peru to a maritime zone of 200 miles for exclusive exploitation of fisheries, and related developments, are given, together with the documents, in Section II, D, *supra*. Chile was the first state to make the unilateral claim to a 200 mile zone for fisheries in its Presidential Declaration concerning the Continental Shelf, 23 June 1947. An English translation of the Declaration, together with the text of the United States Protest Note, appear in *U. N. Leg. Series I*, (1951), page 6. Another English translation of the Declaration is printed in N.W.C., *I.L. Documents, 1948-49*, page 188. There is a French translation in *I.C.J., Pleadings, 1951, U.K.-Norway*, II, page 256. The Protest Note of the United Kingdom to Chile, a Note from the Netherlands to the United Kingdom stating the claim would not be recognized, a Note from France to the United Kingdom taking the position there was no duty to protest in the absence of official notification and expressing the view such claims were invalid under international law, and the United States Protest Note to Chile, are printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, II, page 750; IV, page 56; IV, page 605, and IV, page 599. The United States Note appears also in A/CN.4/19, page 114, and 44 *A.J.I.L.*, page 674. In October 1954, Sweden sent identical Notes of Protest on the territorial waters question to Chile, Ecuador and Peru. The Swedish Note to Chile is reprinted below. Although the United States Note of Protest to Chile of 2 July 1948 has been printed elsewhere, it is reprinted here as representative and illustrative. The text is taken from a copy of the Note furnished by the Department of State.

Chile’s comments on various drafts of the International Law Commission appear in A/CN.4/99/Add. 1, page 10; and A/2456, page 43.

* * * * *

b. SWEDISH NOTE OF PROTEST TO CHILE, OCTOBER 1954, REGARDING THE EXTENT OF TERRITORIAL WATERS ALONG THE COASTS OF CHILE, ECUADOR, AND PERU. FROM *UTRIKESFRÅGOR 1954*, CH. X, PUBLISHED BY THE SWEDISH ROYAL FOREIGN OFFICE

“The attention of the Swedish Government has been drawn to the fact that Chile’s (Ecuador’s, Peru’s) delegates to a conference between Chile, Ecuador, and Peru for the exploitation and conservation of the natural sea resources of the Pacific Ocean, in August 1952, made claims to exclusive sovereignty and jurisdiction over the

ocean area along the coasts of the said countries to a width of at least 200 nautical miles, which sovereignty and jurisdiction were to include exclusive sovereignty and jurisdiction over the sea-bed within the same area and the right to regulate fishing and whaling within the area.

"The Swedish Government wishes by reason thereof to call attention to the fact that international regulations pertaining to the ocean have been included by the United Nations among the subjects to be taken up for codification and that the International Law Commission of the United Nations has accordingly prepared proposed regulations governing the so-called continental shelf, defined as "the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters." The proposed regulations expressly state that the rights of coastal states with respect to the continental shelf shall not apply to the waters above it in their capacity as high seas.

"The proposal has not yet resulted in any international agreement, and until such an agreement has been reached the Swedish Government must consider the question of the rights of coastal states over the continental shelf as being an open question. Under any circumstances, it is the firm conviction of the Swedish Government that these rights should not be allowed to infringe upon the freedom of the seas or upon the rights, among other things, with respect to shipping and fishing, which according to international law belong to all nations on the high seas.

"With respect to the extent of territorial waters, the Swedish Government has repeatedly declared itself prepared to recognize the limits that have been historically established, for example, 3-, 4-, or 6-mile limits, but that it deems an extension of territorial waters beyond these time-honored limits as an encroachment on the freedom of the seas and as a violation of international law.

"For these reasons the Swedish Government cannot refrain from gravely protesting the Chilean (Ecuadorian, Peruvian) Government's claims to sovereignty over the water area to a width of at least 200 nautical miles from the coast and over the sea-bed, regardless of the depth of the sea, and reserves all rights that these claims or the regulations which the governments of Chile (Ecuador, Peru) may issue on the basis thereof regard-

ing fishing or whaling, shall not affect the rights which Sweden and Swedish citizens enjoy under international law on the high seas."

* * * * *

c. UNITED STATES NOTE OF PROTEST TO CHILE, 2 JULY 1948

"I have the honor to refer to the Decree issued by the President of the Republic of Chile on June 25, 1947 concerning the conservation of the resources of the continental shelf and the epicontinental seas and to advise that I have been instructed by my Government to make certain reservations with respect to the rights and interests of the United States of America.

"The United States Government has carefully studied this declaration of the President of the Republic of Chile. The Declaration cites the Proclamations of the United States of September 28, 1945 in the Preamble. My Government is accordingly confident that His Excellency, the President of the Republic of Chile, in issuing the Declaration, was actuated by the same long-range considerations with respect to the wise conservation and utilization of natural resources as motivated President Truman in proclaiming the policy of the United States relative to the natural resources of the subsoil and sea bed of the continental shelf and its policy relative to coastal fisheries in certain areas of the high seas. The United States Government, aware of the inadequacy of past arrangements for the effective conservation and perpetuation of such resources, views with utmost sympathy the considerations which led the Chilean Government to issue its Declaration.

"At the same time, the United States Government notes that the principles underlying the Chilean Declaration differ in large measure from those of the United States Proclamations and appear to be at variance with the generally accepted principles of international law. In these respects, the United States Government notes in particular (1) the Chilean Declaration confirms and proclaims the national sovereignty of Chile over the continental shelf and over the seas adjacent to the coast of Chile outside the generally accepted limits of territorial waters, and (2) the Declaration fails, with respect to fishing, to accord appropriate and adequate recognition to the rights and interests of the United States in the high

seas off the coast of Chile. In view of these considerations, the United States Government wishes to indicate to the Chilean Government that it reserves the rights and interests of the United States so far as concerns any effects of the Declaration of June 25, 1947, or of any measures designed to carry that Declaration into execution.

"The reservations thus made by the United States Government are not intended to have relation to or to prejudge any Chilean claim with reference to the Antarctic Continent or other land areas.

"The Government of the United States of America is similarly reserving its rights and interests with respect to decrees issued by the Governments of Argentina and Peru which purport to extend their sovereignty beyond the generally accepted limits of territorial domain."

7. China, Republic of (Nationalist)

NOTE. According to a Note to the United Nations Secretariat from the Chinese Delegation, dated 9 February 1956, Nationalist China has no legislation on the breadth of territorial waters. It has been reported, however, that the Foreign Ministry notified the American Embassy in Taiwan in March 1956 of a decision of the Executive Yuan extending the territorial water belt to twelve miles. Prior to the receipt of this information, it had been generally understood that the Chinese Nationalist Government adhered to the principle of the three-mile belt of territorial waters. See A/CN.4/99, page 18. China had previously claimed twelve miles for customs purposes. Customs Preventive Law, 19 June 1934, excerpts printed in *U.N. Leg. Series I* (1951), page 62.

8. Costa Rica

NOTE. Costa Rica followed the Chilean pattern of claiming 200 miles in its Decree Law No. 116 of 27 July 1948. English translations of this Decree are printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, IV, page 591, and in *N.W.C., I.L. Documents, 1948-49*, page 193, where the date was misprinted as 29 July. Significant modifications to this Decree, in terms of claims to sovereignty over the 200 mile zone, were made in Decree Law No. 803 of 2 November 1949. Paragraph 3 of the preamble of the later Decree speaks of a consensus that a coastal state has the right and duty to conserve contiguous fisheries in harmony with the rights of any other state. In the earlier Decree, paragraph 3 of the preamble speaks of an "inalienable right" to treat the adjacent epicontinental sea as part of national territory. Additional paragraphs 5 and 6 of the preamble of the later Decree refer to the policy to be followed in concluding treaties with other states. Article 2 of the earlier Decree asserts national sovereignty over the adjacent seas while Article 2 of the later Decree asserts the rights and interests of Costa Rica. Assertion of the right to "control" within the 200 mile zone in Article 4 of the earlier Decree is omitted and only the right of protection is asserted in Article 4 of the later Decree. English translations of this later Decree of 1949 are printed in *U. N. Leg. Series I* (1951), page 9, and in *I.C.J., Pleadings, 1951*,

U.K.-Norway, IV, page 594. For French translation, see *Ibid.*, III, page 666. Notes of Protest by the United Kingdom against these two Decrees are printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, IV, pages 592 and 595. No Note of Protest, if any, by the United States has been found. It will be noted that the United States and Costa Rica were the original parties to the Inter-American Tropical Tuna Commission, effective 3 March 1950, printed *supra*, Section III, G, 1. It was also noted above in Section II, D, 1, that Costa Rica was stated to have adhered to the Declaration on the Maritime Zone of 200 miles by Chile-Ecuador-Peru.

In the Political Constitution of 7 November 1949, Article 6 claims the air space above its territorial waters and continental shelf but does not define either of these areas. Article 6 is printed in *U. N. Leg. Series I* (1951), at page 300. Articles 1 and 7 of the Maritime Hunting and Fishing Act, Decree No. 190 of 28 September 1948, is in *Ibid.*, page 8. Decree No. 426 of 8 March 1949 amended this Act but Articles 1 and 7 are unchanged. Decree No. 363 (or 263?) of 11 January 1949, as amended by Decree No. 739 of 4 October 1949, defines "coastal fishing" as that carried on not more than twelve miles from the coast and gives authority to regulate methods of fishing within areas defined by the appropriate Minister.

9. Cuba

a. NOTE. A proposal to amend Article 3 of the Political Constitution in 1945 to claim the continental shelf and the waters above is referred to in A/CN.4/32 at pages 61-62. The text of the proposed amendment as translated into French is given in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 669. Legislative Decree No. 1948 of 25 January 1955 Relating to the Territorial Sea is the latest Cuban legislation on the subject. Articles 1 and 2 of this Decree, reproduced below, are taken from the *Gaceta Oficial No. 22* of 27 January 1955, as translated by the United Nations Secretariat. Earlier Cuban legislation is reproduced in *U. N. Leg. Series I* (1951), pages 64-66 and Note, page 66.

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b. ARTICLES 1 AND 2 OF LEGISLATIVE DECREE NO. 1948 OF 27 JANUARY 1955

"ARTICLE 1. The waters situated between the coast of the Island and the adjacent keys are hereby declared internal waters, in so far as neither the distance between the said coast and the keys nor the distance between one key and another exceeds ten miles.

"ARTICLE 2. The State is hereby empowered to take whatever legislative, administrative or technical action is necessary for the protection and conservation of the maritime resources in the zones of the high seas contiguous to the territorial sea of Cuba."

10. Denmark

NOTE. Danish legislation on fishing and territorial waters is printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, pages 673-676. A Danish Note to

the United Nations of 13 January 1956 states that a committee is studying the delimitation of the Danish territorial sea. A/CN.4/99, page 20. In A/CN.4/99/Add. 9, Denmark submitted additional comments on the International Law Commission drafts. With respect to the breadth of the territorial sea, Denmark states there is no uniform practice, but that each State is not free to set its own limits. It believes a modest extension, recognizing the interests of other States, especially neighboring States, would be reasonable. Earlier comments by Denmark concerning the continental shelf may be found in A/2456, page 46 and A/CN.4/86. Act No. 277 of 27 May 1950 dealing with conducting business in Greenland defines territorial waters as extending 3 miles from dry reefs. The same limit is defined in Notice No. 292 of 11 November 1953 concerning trapping, fishing, and hunting in Greenland. Denmark enacted legislation on 20 May 1955 defining fishing areas in the Ocean off the Faroe Islands in accordance with the United Kingdom-Denmark Exchange of Notes (1955), printed, *supra*, Section IV, A, 2. References to diplomatic correspondence between Denmark and the Soviet Union concerning the limits of territorial waters in the Baltic, and the texts of Exchange of Notes between Sweden and the Soviet Union on the same subject, may be found in Union of Soviet Socialist Republics, 36, c, *infra*.

11. Dominican Republic

a. NOTE. Act No. 3342 of 13 July 1952 concerning the extent of the territorial waters of the Republic, reproduced below, Article V of the Constitution of 1947, as amended on 1 December 1955, also reprinted below, and the Harbour and Coastal Police Act (No. 3003) of 12 July 1951, are stated to be the Dominican legislation on the subject in a letter from the Dominican Permanent Mission to the United Nations, dated 5 March 1956. A/CN.4/99, page 21. The 1951 Act is not available to the Editor, but some of its provisions dealing with jurisdiction over crime, entry into port, and nationality of vessels, are summarized in *Ibid.*, pages 22-23.

* * * * *

b. ARTICLE V OF CONSTITUTION OF 1947 (EXCERPT)³

“Article V * * * The territorial sea and the continental shelf which correspond to the national territory are also part of the said territory. The extent of the territorial sea and of the continental shelf shall be determined by statute. * * *”

* * * * *

c. ACT NO. 3342 OF 13 JULY 1952 CONCERNING THE EXTENT OF THE TERRITORIAL WATERS OF THE REPUBLIC⁴

ARTICLE 1. Except as hereinafter otherwise provided, a zone of three nautical miles along their coasts, the said zone extending seaward from the mean low-water mark, is hereby established

³ Translation by the United Nations Secretariat.

⁴ Translation by the Secretariat of the United Nations.

as the extent of the territorial or jurisdictional waters of the Republic and of its islands or islets.

The channels and waters comprised between Cape Beata, Beata Island, Alto Velo Island, Los Frailes Islet and Cape Falso are declared to be territorial waters of the Republic.

ARTICLE 2. The bays of Samana, Ocoa and Neyba are declared to be historical waters or bays and as such to be subject to the full sovereignty of the State, within the following boundaries:

(a) In the case of Samana Bay: a transverse line plotted between Cape Samana and Cape San Rafael.

(b) In the case of Ocoa Bay: a transverse line plotted between Salinas Point and Martin Garcia Point.

(c) In the case of Neiba Bay: a transverse line plotted between Martin Garcia Point and Avarena Point.

The transverse lines referred to in sub-paragraphs (a), (b) and (c) serve to demarcate the boundaries of the internal waters and the base line of the territorial waters of the bays aforesaid.

ARTICLE 3. The boundaries, extent or legal status of the territorial sea and of the contiguous zone in and in the vicinity of the bay of Manzanillo may be established through a treaty with the neighbouring Republic of Haiti. Pending the conclusion of such a treaty, the Dominican Republic will observe the rules of international law and of equity which it has in the past observed in the said bay and in the waters adjacent thereto.

ARTICLE 4. An additional zone adjacent to the territorial sea is hereby established which will be known as the "contiguous zone" and which shall consist of a belt extending outward from the outer limit of the territorial sea to a distance of twelve nautical miles into the high seas.

In the said contiguous zone the Dominican State shall exercise the powers of jurisdiction and control necessary for the purpose of preventing contravention of Dominican legislation relating to public health, public revenue, customs, fisheries, protection and conservation of marine species.

ARTICLE 5. The Dominican State reserves the right of ownership in and utilization of the natural resources and wealth which occur or may be discovered in the sea bed or subsoil of the sea in an area, adjacent to Dominican territory, the extent of which shall be determined by the National Administration according to the requirements inherent in the taking possession and exploitation of the said natural resources and wealth, and where appropriate, through international treaties. The Dominican State shall have power to set up or to authorize the setting up of structures

or installations necessary for the exploitation of the said resources and to exercise all and any policing measures necessary for their conservation.

ARTICLE 6. The following are declared to be national internal waters:

- (a) the waters contained within the indentations of the coast;
- (b) the harbours and maritime areas in which structures for the mooring of vessels in general have been or may be set up;
- (c) roadsteads and anchorages;
- (d) the channels and maritime area comprised within the Siete Hermanos group of islets, and likewise the waters comprised between the said islets and the coast from Manzanillo Point to Luna Point.

ARTICLE 7. The Department of War, Marine and Aviation shall be responsible for giving directions concerning and causing to be installed the navigation marks and signals necessary for the purposes of this Act.

ARTICLE 8. All Acts and other legislative provisions which are inconsistent with this Act, and specifically article 76 of the General Police Regulations of 15 June 1923, published in *Gaceta Oficial* No. 3440, are hereby repealed.

TRANSITIONAL PROVISION. The dimensions of the territorial sea and of the contiguous zone which are specified in this Act constitute the minimum limit of the aspirations of the Dominican Republic and, accordingly, do not represent an immutable position with respect to any progressive development of positive international law that may hereafter affect the regime of the sea.

12. Ecuador

a. NOTE. The Chile-Ecuador-Peru claim to a 200 mile maritime zone for exclusive exploitation of fisheries, and related developments, together with the documents, are given in Section II, D, *supra*. The national legislation of Ecuador on this subject is complex. Decree No. 607 of 29 August 1934 claimed 6 miles for fishing purposes off the coasts of Ecuador and 15 miles off the Colon Archipelago. Presidential Decree No. 80 of 2 February 1938 claimed territorial waters of 15 miles for fishing purposes off both coasts. *U. N. Leg. Series I*, (1951), page 68. Article 626 of the Civil Code, 1950, claimed one marine league for territorial waters, and four marine leagues for security and customs. This in effect was a reenactment of Article 582 of the Civil Code, 1857, printed in *Ibid.*, page 67. The Congressional Decree of 6 November 1950, promulgated 21 February 1951, is the basic legislation on the continental shelf. Its provisions on the extent of territorial waters are, by virtue of Article 4 of the Decree, superseded by Ecuador's ratification, 13 December 1954, of the Chile-Ecuador-Peru Declaration of 1952 on the Maritime Zone, claiming 200 miles. The English translation of this Decree, printed below, is taken from *U. N. Leg. Series I*, (1951), /Add. 1 of July 1952. Another English translation, together with the United Kingdom

Protest Note of 14 September 1951, may be found in *I.C.J., Pleadings, 1951, U.K.-Norway*, IV, pages 587-590. In *Ibid.*, IV, page 589, there appears an English translation of Articles 1 and 2 of Presidential Decree No. 003 of 22 February 1951 approving the Maritime Hunting and Fishing Law. More extensive excerpts from this Decree are translated into French in *Ibid.*, III, page 679. The United States Protest Note of 7 June 1951 may be found in *Ibid.*, IV, page 603. See, also, Chile, *supra*, for text of representative Protest Note from the United States, and text of a Protest Note from Sweden. Sweden sent an identical Note to Ecuador. A Law of 20 August 1952 is stated in *C.I.J.-24 (English)* of the Pan American Union, page 28, to have reaffirmed the Decree of 21 February 1951, *supra*, with respect to territorial waters, which was, of course, superseded by the 1952 Tripartite Declaration on the Maritime Zone, *supra*. Decree No. 0160 of 29 January 1952, Decree No. 1376 of 15 July 1952, Decree No. 950-d of 6 August 1953, Decree No. 995-A of 29 April 1955, and Decree No. 1085 of 14 May 1955, contain detailed provisions for the regulation of fishing pursuant to the national legislation and international treaties, *supra*. The last two Decrees referred to authorize fishing by foreign vessels, having permits and licenses, within the 200 mile zone, except for a defined zone of 1,000 metres; prohibit Ecuadorian vessels, other than local fishermen, from bait-fishing within defined zones of coastal fishing villages; and provide that the permission to foreign vessels does not include whaling, which shall be governed by the Chile-Ecuador-Peru agreements.

A Conference on United States-Ecuadorian Fishery Relations was held in Quito in the spring of 1953. The Final Act and Proceedings are contained in an unnumbered document in the files of the Department of State. The problem of innocent passage for fishing vessels discussed at this Conference is reviewed in a Note by Selak, 48 *A.J.I.L.* (1954), page 627. Comments by Ecuador on the draft articles on the continental shelf of the International Law Commission appear in A/2456, page 49.

* * * * *

b. CONGRESSIONAL DECREE CONCERNING THE CONTINENTAL SHELF, 21 FEBRUARY 1951. REGISTRO OFICIAL: ORGANO DEL GOBIERNO DEL ECUADOR, 3RD YEAR, NO. 756 (6 MARCH 1951), P. 6219.⁵

THE CONGRESS OF THE REPUBLIC OF ECUADOR

CONSIDERING:

That there is an urgent need to define precisely the extent of the territorial sea under the jurisdiction of Ecuador;

That the American Community of Nations has adopted the resolutions on territorial waters passed at the first and second meetings of the Ministers of Foreign Affairs of the American Republics, held respectively at Panama and Havana in 1939 and 1940, recommending that the American States should embody in their domestic legislation the rules and principles contained in the said declarations;

⁵ Translation by the Secretariat of the United Nations.

That military progress has led nations to extend the limit of their jurisdiction over their territorial waters;

HEREBY DECREES as follows:

ARTICLE 1. The continental platform or shelf contiguous to the coasts of Ecuador, and all or any part of the wealth it contains, belong to the State, which shall exercise the right of use and control to the extent necessary to ensure the conservation of the said property and the control and protection of the fisheries appertaining thereto.

ARTICLE 2. All submerged land contiguous to the continental territory of Ecuador where the depth of the superjacent waters does not exceed two hundred metres shall be deemed to constitute the Ecuadorean continental shelf.

ARTICLE 3. The territorial sea under national dominion shall extend for a minimum distance of twelve sea miles of twenty to the degree, measured from the points of the Ecuadorean coast projecting farthest into the Pacific Ocean, together with all internal waters of the gulfs, bays, straits and channels included within a line joining those points.

The internal sea lying within a perimeter of twelve sea miles measured from the most salient points of the outermost islands in the Galapagos Archipelago is also territorial sea and subject to the provisions of article 1 of this Decree.

ARTICLE 4. If under any international treaty or convention, such as the Treaty of Mutual Assistance, the areas allotted for maritime policing or protection are greater than those established in this Decree, the provisions of such agreement shall prevail and shall be enforced as part of this Decree to the extent laid down in the agreement.

ARTICLE 5. All contrary provisions of the Civil Code, of the Maritime Police Code and of any other law are hereby amended so as to conform to the present Decree, which shall enter into force from the date of its publication in the *Registro Oficial*.

13. Egypt

a. NOTE. By Royal Decree of 15 January 1951, effective 18 January 1951, concerning the territorial waters of the Kingdom, Egypt made extensive claims to internal and territorial waters. An English translation of the Decree is printed in *I. C. J., Pleadings, 1951, U. K.-Norway*, III, page 676. The text of the Decree, reprinted below, is taken from that source. Articles 5 and 9 are reprinted in English in *U. N. Leg. Series I* (1951), page 307. Protest Notes from the United Kingdom and the United States, dated 28 May and 4 June 1951, respectively, are printed in *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, pages 578 and 603. Egyptian comments to the International Law

Commission on the draft articles concerning the continental shelf are in A/2456, page 50, and on territorial waters, in A/2934, page 26.

A comment on the 1955 International Law Commission Report and the Egyptian position may be found in 11 *Revue Egyptienne de Droit International* 190 (1955), with a map of the Egyptian coastline at page 206 thereof. See, also, J. Y. Brinton, "Territorial sea and the continental shelf," 8 *Ibid.* 103 (1952); 7 *Ibid.* 91 (1951) for texts of United Kingdom and United States Protests to Egypt; and 6 *Ibid.* 175 (1950) for text of translation of the Royal Decree of 15 January 1951.

* * * * *

b. ROYAL DECREE CONCERNING THE TERRITORIAL WATERS OF THE KINGDOM OF EGYPT, 15 JANUARY 1951

WE, FAROUK, IST, KING OF EGYPT,

On the proposition of the Minister of War and Marine and with approbation of our Council of Ministers;

HEREBY DECREE AS FOLLOWS:

ARTICLE 1. For the purpose of this decree,

(a) The term "nautical mile" is the equivalent of 1,852 (one thousand, eight hundred and fifty two) metres;

(b) The term "bay" includes any inlet, lagoon or other arm of the sea;

(c) The term "island" includes any islet, reef, rock, bar or permanent artificial structure not submerged at lowest low tide;

(d) The term "shoal" denotes an area covered by shallow water, a part of which is not submerged at lowest low tide; and

(e) The term "coast" refers to the coasts of the Mediterranean Sea, the Red Sea, the Gulf of Suez and the Gulf of Aqaba.

ARTICLE 2. The territorial waters of the Kingdom of Egypt as well as the air space above and the soil and subsoil beneath them, are under the sovereignty of the Kingdom, subject to the provisions of international law as to the innocent passage of vessels of other nations through the coastal sea.

ARTICLE 3. The territorial waters of the Kingdom of Egypt embrace both the inland waters and the coastal sea of the Kingdom.

ARTICLE 4. The inland waters of the Kingdom include:

(a) the waters of the bays along the coasts of the Kingdom of Egypt;

(b) the waters above and landward from any shoal not more than twelve nautical miles from the mainland or from an Egyptian island;

(c) the waters between the mainland and an Egyptian island not more than twelve nautical miles from the mainland; and

(d) the waters between Egyptian islands not farther apart than twelve nautical miles.

ARTICLE 5. The coastal sea of the Kingdom lies outside the inland waters of the Kingdom and extends seaward for a distance of six nautical miles.

ARTICLE 6. The following are established as the base-lines from which the coastal sea of the Kingdom of Egypt is measured:

(a) where the shore of the mainland or an island is fully exposed to the open sea, the lowest low-water mark on the shore;

(b) where a bay confronts the open sea, lines drawn from headland to headland across the mouth of the bay;

(c) where a shoal is situated not more than twelve nautical miles from the mainland or from an Egyptian island, lines drawn from the mainland of the island and along the outer edge of the shoal;

(d) where a port or a harbour confronts the open sea, lines drawn along the seaward side of the outermost works of the port or a harbour and between such works;

(e) where an island is more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of the islands;

(f) where there is an island group which may be connected with lines not more than twelve nautical miles long, of which the island nearest to the mainland is not more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of all the islands of the group if the islands form a chain or along the outer shores of the outermost islands of the group if the islands do not form a chain; and

(g) where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to the mainland is more than twelve nautical miles from the mainland, lines drawn along the outer shores of all the islands if the group of the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain.

ARTICLE 7. If the measurement of the territorial waters in accordance with the provisions of this decree leaves an area of high sea wholly surrounded by territorial waters and extending not more than twelve nautical miles in any direction, such area shall form part of the territorial waters. The same rule shall apply to a pronounced pocket of high sea which may be wholly enclosed by drawing a single straight line not more than twelve nautical miles long.

ARTICLE 8. If the inland waters of the Kingdom of Egypt, or if its coastal sea, should be overlapped by the waters of another State, boundaries will be determined in agreement with the State

concerned in accordance with the principles of international law or by mutual agreement.

ARTICLE 9. With a view to assuring compliance with the laws and regulations relating to security, navigation, fiscal and sanitary matters, maritime surveillance may be exercised in a contiguous zone outside the coastal sea, extending for a further distance of six nautical miles and measured from the base-lines of the coastal sea; this provision shall not be deemed to apply to the rights of the Kingdom of Egypt with respect to fishing.

ARTICLE 10. Our Ministers are charged, each in so far as he is concerned therein, with the execution of this Decree and it will come into effect as from the date of its publication in the Official Journal.

(Certified translation from the original published in Arabic in the *Official Journal No. 6* dated 18th January, 1951, An. 122.)

14. El Salvador

a. NOTE. Article 7 of the Political Constitution of 7 September 1950, effective 14 September 1950, follows Chile and Peru in claiming 200 miles of sea as part of its territory. Article 7 and the United States Protest Note of 12 December 1950 are printed in *U. N. Leg. Series I*, (1951), page 300. Earlier legislation may be found, *Ibid.*, page 71. Article 7 is also printed in *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, page 596. The United Kingdom Protest Note of 12 February 1950 is printed, *Ibid.*, IV, page 596. The United States Note is also printed in *Ibid.*, IV, page 600, and was previously published as Department of State Press Release No. 1256, 22 December 1950. Decree No. 1961 of 25 October 1955 defines the coastal sea as 12 miles and restricts fishing therein to nationals of El Salvador, and to corporations of El Salvador of which at least 50% is owned by nationals of El Salvador. The English translation of Article 7, printed below, is taken from *U. N. Leg. Series I* (1951), page 300. Comments by El Salvador on the draft articles on territorial waters of the International Law Commission may be found in A/2934, page 27.

* * * * *

b. ARTICLE 7 OF THE POLITICAL CONSTITUTION OF 7 SEPTEMBER 1950

ARTICLE 7. The territory of the Republic within its present boundaries is irreducible. It includes the adjacent seas to a distance of two hundred sea miles from low water line and the corresponding air space, subsoil and continental shelf.

The provisions of the foregoing paragraph shall not affect the freedom of navigation in accordance with the principles recognized under International Law.

The Gulf of Fonseca is a historic bay subject to a special regime.

15. Ethiopia

a. NOTE. Maritime Proclamation, No. 137 of 1953, published in the *Official*

Gazette of 25 September 1953, claimed for Ethiopia a belt of territorial waters twelve miles in width. Excerpts from Section B, I, 6(f) of this Proclamation are reprinted below. The document was translated by the United Nations Secretariat. Also reprinted below is a Protest Note from Sweden to Ethiopia concerning this claim.

* * * * *

b. MARITIME PROCLAMATION, NO. 137 OF 1953

* * *

“B. MERCANTILE MARINE PROVISIONS.

I. DEFINITIONS

6. For the purposes of this Proclamation and the regulations and instructions to be issued in conformity therewith, * * *

(f) The territorial waters of Our Empire are defined as extending from the extremity of sea-board at maximum annual high tide of the Ethiopian continental coast and of the coasts of Ethiopian islands, in parallel line on the entire sea-board and to an outward distance of twelve nautical miles, * * * (Exception of Dolilac archipelago) and that in the case of pearl and other sedentary fisheries the seaward limit of the territorial waters shall extend to the limits of the said fisheries.

* * *”

* * * * *

c. SWEDISH NOTE OF PROTEST TO ETHIOPIA OF FEBRUARY 11, 1954, REGARDING THE EXTENSION OF TERRITORIAL WATERS ALONG THE COAST OF ERITREA. FROM *UTRIKESFRÅGOR* 1954, CH. X, PUBLISHED BY THE SWEDISH ROYAL FOREIGN OFFICE

By reason of the fact that the Ethiopian Government has by Maritime Proclamation of September 25, 1953, Paragraph 6, proclaimed a maritime belt 12 nautical miles in width, the Swedish Government deems itself obliged to point out that in its opinion this extension of territorial waters in comparison with the limit hitherto in force constitutes an encroachment upon the high seas, where the citizens of every country have the right to fish and navigate without interference on the part of other countries. The Swedish Government wishes in this connection to call attention to the enclosed Swedish declaration⁶ submitted to the International Conference at The Hague, 1930, for the Codification of International Law. In accordance therewith the Swedish Government reserves all rights in opposition to the extension by any country

⁶ Not reprinted.

of its territorial waters beyond the limit earlier in force for its coastline.

16. Guatemala

a. NOTE. English translations of Guatemalan legislation of 1939 and 1941, defining territorial waters as extending twelve maritime miles from the low-water mark, are contained in *U. N. Leg. Series I* (1951), page 79. A Petroleum Law, Legislative Decree No. 649 of 30 August 1949, claimed petroleum resources to the edge of the continental shelf but made no claim to the waters above the shelf. An English translation of Articles 1, 29, and 36 appears in *Ibid.*, page 10.

Article 399, Civil Code, Act No. 1932 of 29 October 1947, declares the maritime zone on the coasts to be part of the public domain to the extent and with the effects specified by international law. Chapter 1, Article 1, of the Civil Aviation Law, Act No. 563 of 28 October 1948, contains a claim to exclusive sovereignty of the air space over the territorial sea. Article 3 of the Constitution of Guatemala of 1 March 1956, as translated by the United Nations Secretariat, is reprinted below. Article 214 of the Constitution includes the following as "the property of the Nation": * * * "4. The maritime zone of the territory of the Republic, the continental shelf, the air space and the stratosphere, to the extent and in the manner specified by law."

Article 33 of the Political Statute of 10 August 1954 declares the resources of the subsoil to belong to the Nation. The Petroleum Code, Decree No. 345 of 7 July 1955, in Article 1, states, in part: "All of the natural deposits or occurrences of petroleum that are located within the territorial or maritime limits of the Republic or within the outer limit of the continental platform belong to the Nation."

* * * * *

b. ARTICLE 3 OF THE CONSTITUTION OF THE REPUBLIC OF GUATEMALA OF 1 MARCH 1956

"ARTICLE 3. The public domain shall include all Guatemalan territory, soil, subsoil, territorial sea, continental shelf and air space and shall extend to the natural resources and wealth existing therein, without prejudice to free maritime and air navigation in accordance with the law and the provisions of international treaties and conventions."

17. Honduras

a. NOTE. Honduras in recent years has amended its Political Constitution, Agrarian Law, and Civil Code, and has enacted legislation concerning the continental shelf and territorial waters. Congressional Decree No. 102 of 7 March 1950, amending the Political Constitution, as reprinted below, is translated by the United Nations Secretariat and printed in *U. N. Leg. Series I*, (1951), page 11. This Decree was ratified by Decree No. 48 of 1 February 1951. Another English translation of Decree No. 102 appears in *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, page 581. Article 153 of the Constitution of 28 March 1936, amended by Decree No. 102, *supra*, claimed 12 kilometers from low-water mark as territorial sea. It is printed in *U. N. Leg.*

Series I (1951), page 80, and a United Kingdom Protest Note against this 1936 Article appears in *I. C. J., Pleadings, 1951, U. K.-Norway*, II, page 743. Congressional Decree No. 103 of 7 March 1950, amending the Agrarian Law, as translated by the United Nations Secretariat in *U. N. Leg. Series I*, (1951), page 12, provides in Article 1, (3): "Its submarine platform or continental and insular shelf and the waters which cover it, in both the Atlantic and Pacific Oceans, at whatever depth it may be found and whatever its extent may be" [belong to Honduras]. (Editorial insertion.) Decree No. 103 appears also in English translation in *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, page 581.

Congressional Decree No. 104, amending the Civil Code, of 7 March 1950, as translated by the United Nations Secretariat in *U. N. Leg. Series I*, (1951), page 301, provides in part, as follows, in amended Article 619, second paragraph: "* * * Ownership of all natural wealth, existing, or that may exist, in its submarine platform or continental or insular shelf, in its lower strata and in the sea space included within the vertical planes rising from its limits, shall also be vested in the State. * * *" Article 621, as amended, *Ibid.*, provides: "The adjacent waters, to a distance of 12 kilometers from the low water mark, shall be territorial waters and national property; but the sovereignty of the State shall extend to the submarine platform or continental and insular shelf and the overlying waters, at whatever depth it may be encountered and whatever may be its extent, without prejudice to the right of free navigation in accordance with international law." Article 621 prior to its amendment is printed, *Ibid.*, page 80. Another English translation of Decree No. 104 appears in *I. C. J., Pleadings, 1951, U. K.-Norway*, IV, page 582.

Congressional Decree No. 25 of 17 January 1951, approving and incorporating Presidential Decree No. 96 of 28 January 1950, as reprinted below, is translated by the United Nations Secretariat and printed in *U. N. Leg. Series I*, (1951), page 302. A French translation of Decree No. 96 appears in *I. C. J., Pleadings, 1951, U. K.-Norway*, III, page 694. All these recent Honduran Decrees have been protested by the United Kingdom in Notes of 23 April and 10 September 1951, and are printed in *Ibid.*, IV, pages 583 and 585. No Note of Protest, if any, by the United States has been found.

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b. CONGRESSIONAL DECREE NO. 102, AMENDING THE POLITICAL CONSTITUTION, 7 MARCH 1950. LA GACETA: DIARIO OFICIAL DE LA REPUBLICA DE HONDURAS, VOL. 75, NO. 14,055 (16 MARCH 1950), P. 2.⁷

ARTICLE 1. The name of the single chapter of title 1, the name of title 2, and articles 4 and 153 of the Political Constitution are amended, and shall read as follows:

(a) Name of the single chapter of title 1: "Concerning the Nation and Sovereignty."

(b) Name of title 2. "Concerning Nationality and Citizenship."

(c) **ARTICLE 4.** "The limits of Honduras and its territorial division shall be determined by law. The submarine platform or

⁷ Translation by the Secretariat of the United Nations.

continental and insular shelf, and the waters which cover it, in both the Atlantic and Pacific Oceans, at whatever depth it may be found and whatever its extent may be, forms a part of the national territory.”

(d) ARTICLE 153. “The following belong to the State: Full, inalienable, and imprescriptible dominion of the waters of the territorial seas to the extent of twelve kilometres measured from the low-water mark, and full, inalienable, and imprescriptible dominion of its beaches, and of its lakes, lagoons, estuaries, rivers, and rivulets which run continuously, with the exception of springs which rise and terminate within private property; also the dominion, likewise full, inalienable, and imprescriptible, over all the resources which exist or may exist in its submarine platform or continental and insular shelf, in its lower strata, and in the area of the sea included within vertical planes constructed on its boundaries.”

ARTICLE 2. The present decree shall be constitutionally ratified by the next legislature and shall enter into force immediately after its publication in *La Gaceta*.

NOTE. Prior to the change introduced by this decree, article 153 of the Constitution of Honduras, of 28 March 1936, provided only that “the State has full *dominion*, inalienable and imprescriptible, over the waters of the territorial seas to a distance of twelve kilometres measured from the lower-water mark.” *Decretos de la Asamblea Nacional Constituyente*, 1936, p. 39.

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- c. CONGRESSIONAL DECREE NO. 25 (APPROVING PRESIDENTIAL DECREE NO. 96 OF 28 JANUARY 1950), 17 JANUARY 1951. *LA GACETA*, VOL. 76, NO. 14,306 (22 JANUARY 1951), P. 1.⁸

THE NATIONAL CONGRESS DECREES AS FOLLOWS:

Single Article.—Decree No. 96, issued by the President of the Republic in the Council of Ministers on 28 January 1950, is hereby approved in whole and in every part, as follows:

“Decree No. 96.—By Juan Manuel Galvez, Constitutional President of the Republic of Honduras.

“WHEREAS scientific survey has shown that the land mass of the mainland and islands continues into the sea for varying distances and at varying depths, and that such continuation, known as the submarine platform or the continental and insular shelf, forms with the land mass a single morphological and geological unit;

⁸ Translation by the Secretariat of the United Nations.

“WHEREAS legal doctrine has acknowledged and international law has declared that the said shelf belongs lawfully to the riparian States, which are entitled to proclaim their sovereignty over it and over the waters covering it, as is shown by the statements of the President of the United States of America on 28 September 1945, of the President of Mexico on 29 October 1945, of the President of the Argentine Republic on 11 October 1946, of the President of the Republic of Chile on 23 June 1947, of the President of the Republic of Peru on 1 August 1947 and by the Legislative Decree of the Founding Committee (*Junta Fundadora*) of the Second Republic of Costa Rica on 27 July 1948;

“WHEREAS the said shelf contains natural riches of inestimable value, such as vegetable plankton, the staple food of marine life, by reason whereof the overlying waters are an inexhaustible source of fish; marine algae producing foodstuffs, fertilizer, potash, bromine, iodine, textiles, etc.; petroleum, and a great variety of other wealth which must be protected as part of the national property;

“WHEREAS for the reasons aforesaid an immediate statement is required setting forth in clear and precise terms the nation’s right to the continental shelf and the waters covering it in both the Atlantic and the Pacific Oceans;

“NOW THEREFORE the President, in the Council of Ministers,

DECREES AS FOLLOWS:

“ARTICLE 1. It is hereby declared that the sovereignty of Honduras extends to the continental shelf of the national territory, both of the mainland and of the islands, and to the waters covering it, at whatever depth it lies and whatever its extent, and that the nation has full, inalienable and imprescriptible domain over all wealth which exists or may exist in it, in its lower strata or in the area of water bounded by the vertical plane passing through its borders.

“ARTICLE 2. The zone of protection of hunting, fishing and exploitation of the mainland and island waters falling by virtue of this Decree within the State’s jurisdiction shall be delimited in accordance with this declaration of sovereignty whenever the Government shall see

fit, and such delimitation shall be ratified, extended or amended as the national interest may require.

"ARTICLE 3. The protection and supervision of the State is hereby declared to extend in the Atlantic Ocean over all waters lying within the perimeter formed by the coast of the mainland of Honduras and a mathematical parallel drawn at sea 200 sea miles therefrom. With regard to the islands of Honduras in the Atlantic, such delimitation shall enclose the zone of sea contiguous to their coasts and extending for two hundred sea miles from every point thereon.

"ARTICLE 4. Subject to reciprocity, this declaration does not deny similar lawful rights of other States, nor affect the freedom of navigation recognized in international law, nor derogate from the rights of sovereignty and domain held by the State of Honduras over its territorial waters."

18. Iceland

a. NOTE. Iceland, like Japan, is a country whose economy is largely dependent on fisheries. Consequently, her legislation is of particular interest. In Iceland's comments to the International Law Commission, A/CN.4/99/Add. 2, page 8, it is stated that the fishery limits for Iceland between 1662 and 1859 were 16 miles and that all bays were closed to foreign fishing. Subsequently, with a breakdown of enforcement, the Danish and British Governments, in the 1901 Agreement, specified 3 miles for fisheries and 10 miles for bays. This 1901 Agreement was terminated in 1951 by Iceland in accordance with due notice. The United Kingdom-Denmark Exchanges of Notes, 1955, amending the 1901 Agreement, is printed, *supra*, Section IV, A, 2.

Law No. 44, concerning the scientific conservation of the continental shelf fisheries, 5 April 1948, is printed in *U. N. Leg. Series I*, (1951), page 12, and another English translation appears in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 696. Minor amendments to this Law were made by Provisional Act No. 37 of 19 March 1952. The law as revised is given in English in A/CN.4/55/Add. 1/ Rev. 1, page 6, together with the Reasons for the Law of 5 April 1948 as submitted to the Icelandic Parliament. Articles 1, 2 and 4 of this Law, and excerpts from the Reasons, as printed below, are taken from this source.

Pursuant to Article 1 of this Law, Regulations have been issued with respect to conservation zones, and the use of base lines across the opening of bays and from outermost rocks, similar to the Norwegian "system" litigated in the Fisheries Case, (*United Kingdom v. Norway*), *supra*, Section I, A; *I.C.J., Reports* (1951), page 116. Regulations of 22 April 1950, for the North Coast of Iceland, were superseded by virtue of Article 6 of the Regulations of 19 March 1952, covering Iceland as a whole. The text of the 1950 Regulations is given in English translation in A/CN.4/55/Add. 1/Rev. 1, page 10, and in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 700; and a memorandum by the Icelandic Government on the 1950 Regulations in *Ibid.*, III, page 701. The

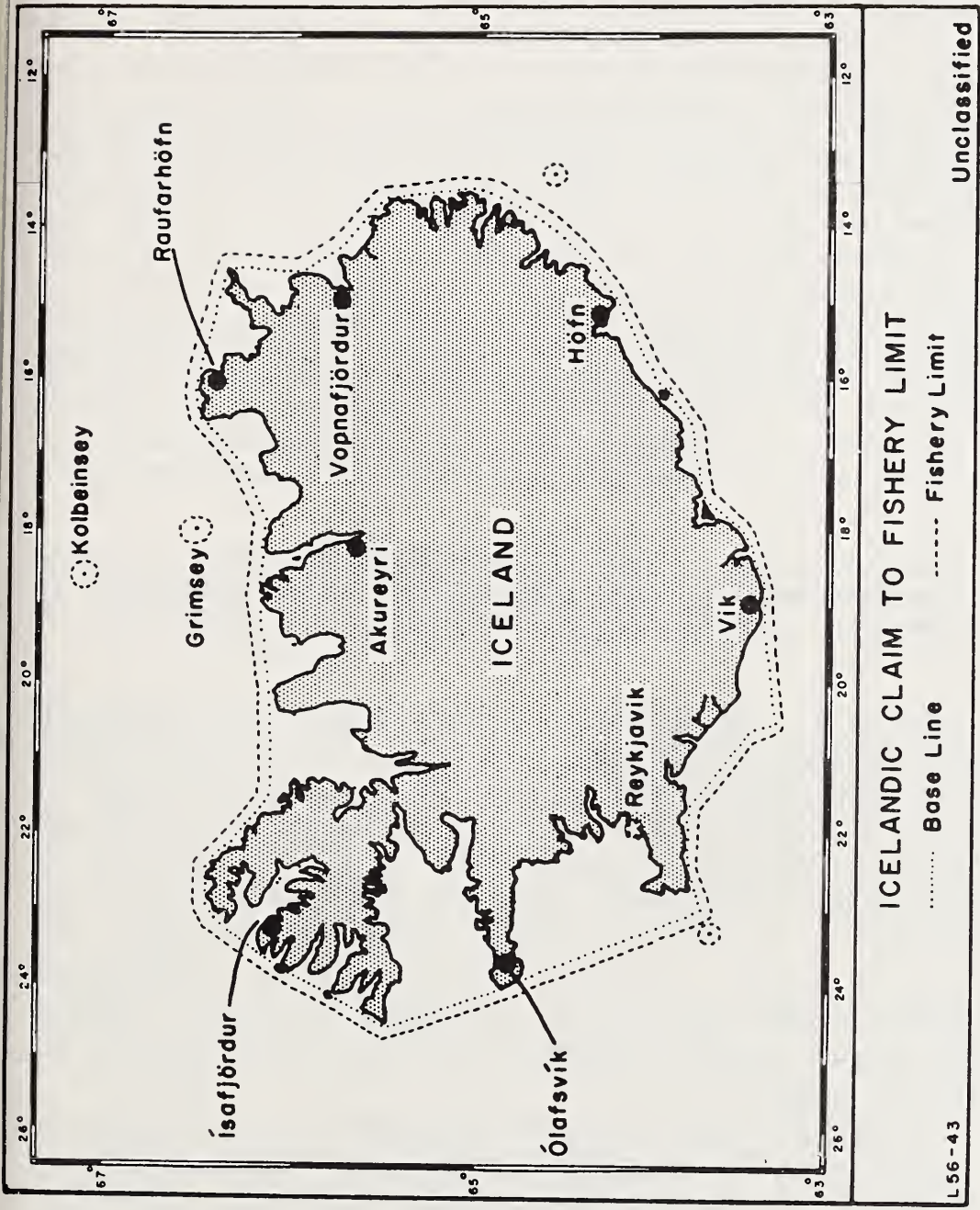


Figure 3.

Regulations of 19 March 1952, effective 15 May 1952, are also based on Law No. 44, *supra*, and follow the same base-line system. A complete English translation of the 1952 Regulations may be found in A/CN.4/55/Add. 1/Rev. 1, page 14, with map, page 17. Articles 1 and 2 of the 1952 Regulations are printed below from this source. The same comments, texts, and Reasons are also printed in A/2456, page 52. Further comments by Iceland are contained in A/2934, page 28, and A/CN.4/99/Add. 2, page 4.

United Kingdom Protest Notes of 6 July 1950, and 23 May 1951, to Iceland concerning the 1950 Regulations, are printed in *I.C.J., Pleadings, 1951, U.K.-Norway*, IV, pages 576 and 577. Correspondence between Iceland and the Netherlands on the same subject is in *Ibid.*, IV, pages 606 and 608. The Netherlands Note is also in *Ibid.*, IV, page 402. A Note of Protest from Belgium to Iceland, in French, is in *Ibid.*, IV, page 401. A subsequent Note from the United Kingdom to Iceland of 2 May 1952 may be found in 1 *I.C.L.Q.* (1952), page 352. A letter to the Editor from the British Foreign Office, 3 July 1956, stated that there have been no recent fishery arrangements between the two governments. See comments, D.J., "Icelandic Fish Limits," 1 *I.C.L.Q.* 71, 350 (1952). For a recent summary of the Icelandic viewpoint, particularly with respect to its dispute with the United Kingdom, see "The Icelandic Efforts for Fisheries Conservation", Additional Memorandum submitted to the Council of Europe by the Government of Iceland, October 1955.

* * * * *

b. LAW NO. 44 OF 5 APRIL 1948⁹ CONCERNING THE SCIENTIFIC CONSERVATION OF THE CONTINENTAL SHELF FISHERIES, AS AMENDED¹⁰; AND STATEMENT OF REASONS (EXCERPTS).

* * *

ARTICLE 1. The Ministry of Fisheries shall issue regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland; wherein all fisheries shall be subject to Icelandic rules and control; Provided that the conservation measures now in effect shall in no way be reduced. The Ministry shall further issue the necessary regulations for the protection of the fishing grounds within the said zones. The Fiskifelag Islands (Fisheries Society) and the Atvinnudeild Háskóla Islands (University of Iceland Industrial Research Laboratories) shall be consulted prior to the promulgation of the said regulations.

The regulations shall be revised in the light of scientific research.

ARTICLE 2. The regulations promulgated under article 1 of the present law shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party.

* * *

ARTICLE 4. The Ministry of Fisheries shall to the extent prac-

⁹ *Stjórnartidindi*, 1948, A4, p. 147

¹⁰ By Provisional Act No. 37 of 19 March 1952 (*Stjórnartidindi*, 1952, A2.)

licable, participate in international scientific research in the interest of fisheries conservation.

* * *

REASONS FOR THE LAW OF 5 APRIL 1948 (submitted to the Icelandic Parliament) :

It is well known that the economy of Iceland depends almost entirely on fishing in the vicinity of its coasts. For this reason, the population of Iceland has followed the progressive impoverishment of fishing grounds with anxiety. Formerly, when fishing equipment was far less efficient than it is today, the question appeared in a different light, and the right of providing for exclusive rights of fishing by Iceland itself in the vicinity of her coasts extended much further than is admitted by the practice generally adopted since 1900. It seems obvious, however, that measures to protect fisheries ought to be extended in proportion to the growing efficiency of fishing equipment.

Most coastal States which engage in fishing have long recognized the need to take positive steps to prevent over-exploitation resulting in a complete exhaustion of fishing grounds. Nevertheless, there is no agreement on the manner in which such steps should be taken. The States concerned may be divided into two categories. On the one hand, there are the countries whose interest in fishing in the vicinity of foreign coasts is greater than their interest in fishing in the vicinity of their own coasts. While recognizing that it is impossible not to take steps to mitigate the total exhaustion of fishing grounds, these States are nevertheless generally of opinion that unilateral regulations by littoral States must be limited as far as possible. They have also insisted vigorously that such measures can only be taken by virtue of international agreements.

On the other hand, there are the countries which engage in fishing mainly in the vicinity of their own coasts. The latter have recognized to a growing extent that the responsibility of ensuring the protection of fishing grounds in accordance with the findings of scientific research is, above all, that of the littoral State. For this reason, several countries belonging to the latter category have, each for its own purposes, made legislative provision to this end the more so as international negotiations undertaken with a view to settling these matters have not been crowned with success, except in the rather rare cases where neighbouring nations were concerned with the defence of common interests. There is no doubt that measures of protection and prohibition can be taken better and more naturally by means of international agreements

in relation to the open sea, i.e., in relation to the great oceans. But different considerations apply to waters in the vicinity of coasts.

In so far as the sovereignty of States over fishing grounds is concerned, two methods have been adopted. Certain States have proceeded to a determination of their territorial waters, especially for fishing purposes. Others on the other hand, have left the question of the territorial waters in abeyance and have contented themselves with asserting their exclusive right over fisheries, independently of territorial waters. Of these two methods, the second seems to be the more natural, having regard to the fact that certain considerations arising from the concept of "territorial waters" have no bearing upon the question of an exclusive right to fishing, and that there are therefore serious drawbacks in considering the two questions together.

When States established their sovereignty over fishing zones in the vicinity of their coasts they adopted greatly varying limits; in the majority of cases, they adopted a specified number of nautical miles: three miles, four miles, six miles or twelve kilometres, etc. It would appear, however, to be more natural to follow the example of those States which have determined the limit of their fisheries jurisdiction in accordance with the contour of the continental shelf along their coasts. The continental shelf of Iceland is very clearly distinguishable, and it is therefore natural to take it as a basis. This is the reason why this solution has been adopted in the present draft law.

COMMENTARY ON ARTICLE 1. Two kinds of provisions are concerned: on the one hand, the delimitation of the waters within which the measures of protection and prohibition of fishing should be applied, i.e., the waters which are deemed not to extend beyond the continental shelf; and, on the other hand, the measures of protection and prohibition of fishing which should be applied within these waters. In so far as the enactment of measures to assure the protection of stocks of fish is concerned, the views of marine biologists will have to be taken into consideration, not only as regards fishing grounds and methods of fishing, but also as regards the Seasons during which fishing shall be open, and the quantities of fish which may be caught.

At present, the limit of the continental shelf may be considered as being established precisely at a depth of 100 fathoms. It will, however, be necessary to carry out the most careful investigations in order to establish whether this limit should be determined at a different depth.

COMMENTARY ON ARTICLE 2. The provisions of this article have a bearing upon the following agreements: the Agreement between Denmark and the United Kingdom, of 24 June 1901, and the International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, of 23 March 1937. Should the provisions contained in this draft law appear to be incompatible with these agreements, they would not, of course, be applied against the States signatories to the said agreements, as long as these agreements remain in force.

* * *

COMMENTARY ON ARTICLE 4. On 17 August 1946, the International Council for the Exploration of the Sea recommended that measures be taken to prohibit fishing in the Faxaflói. It goes without saying that Iceland will take part, to the fullest possible extent, in any initiative of this kind in relation to her own coast as well as others. She has already given proof of her interest in these problems, in particular by taking part in international oceanographic research.

* * * * *

c. ARTICLES 1 AND 2 OF THE REGULATIONS OF 19 MARCH 1952 CONCERNING CONSERVATION OF FISHERIES OFF THE ICELANDIC COASTS

ARTICLE 1

All trawling and Danish seine-netting is prohibited off the Icelandic coasts inside a line which is drawn four nautical miles from the outermost points of the coasts, islands and rocks and across the opening of bays.

The line shall be drawn by drawing straight base lines between the following points, and then a parallel line four nautical miles seawards:

1. Horn	66°27'4 N., 22° 24'5 W.
2. Írabúi	66°19'8 N., 22° 06'5 W.
3. Drangasker	66°14'3 N., 21° 48'6 W.
4. Selsker	66°07'3 N., 21° 31'2 W.
5. Ásbúarífi	66°08'1 N., 20° 11'2 W.
6. Siglunes	66°11'9 N., 18° 50'1 W.
7. Flatey	66°10'3 N., 17° 50'5 W.
8. Lágey	66°17'8 N., 17° 07'0 W.
9. Rauoinúpur	66°30'7 N., 16° 32'5 W.
10. Rifstangi	66°32'3 N., 16° 11'9 W.
11. Hraunhafnartangi	66°32'3 N., 16° 01'6 W.
12. Langanes	66°22'6 N., 14° 32'0 W.
13. Skálatóarsker	65°59'7 N., 14° 37'5 W.
14. Bjarnarey	65°47'1 N., 14° 18'3 W.
15. Almanningsfles	65°33'1 N., 13° 40'6 W.

16.	Glettinganes	65°30'6 N., 13° 36'4 W.
17.	Norofjaroarhorn	65°10'0 N., 13° 31'0 W.
18.	Gerpír	65°04'7 N., 13° 29'8 W.
19.	Hólmur	64°58'9 N., 13° 30'7 W.
20.	Setusker	64°57'7 N., 13° 31'6 W.
21.	Pursasker	64°54'1 N., 13° 36'9 W.
22.	Yztibooi	64°35'2 N., 14° 01'6 W.
23.	Selsker	64°32'8 N., 14° 07'1 W.
24.	Hvítingar	64°23'8 N., 14° 28'1 W.
25.	Stokksnes	64°14'1 N., 14° 58'5 W.
26.	Hrollaugseyjar	64°01'7 N., 15° 58'8 W.
27.	Tvísker	63°55'6 N., 16° 11'4 W.
28.	Ingólfshöfoi	63°47'8 N., 16° 38'6 W.
29.	Hvalsíki	63°44'1 N., 17° 33'7 W.
30.	Meoallandssandur I	63°32'4 N., 17° 56'0 W.
31.	Meoallandssandur II	63°30'6 N., 18° 00'0 W.
32.	Mýrnatangi	63°27'4 N., 18° 12'0 W.
33.	Kötlutangi	63°23'4 N., 18° 43'0 W.
34.	Lundadrangur	63°23'5 N., 19° 07'6 W.
35.	Geirfuglasker	63°19'0 N., 20° 30'1 W.
36.	Einidrangur	63°27'4 N., 20° 37'2 W.
37.	Selvogur	63°49'2 N., 21° 39'4 W.
38.	Hópsnes	63°49'3 N., 22° 24'6 W.
39.	Eldeyjardrangur	63°43'8 N., 22° 59'6 W.
40.	Gáluvíkurtangi	64°44'9 N., 23° 55'2 W.
41.	Hraunvör	64°49'6 N., 24° 01'0 W.
42.	Skálasnagi	64°51'2 N., 24° 02'7 W.
43.	Bjargtangar	65°30'2 N., 24° 32'3 W.
44.	Kópanes	65°48'3 N., 24° 06'3 W.
45.	Baroi	66°03'7 N., 23° 47'6 W.
46.	Straumnæs	66°25'7 N., 23° 08'5 W.
47.	Kögur	66°28'3 N., 22° 55'8 W.
48.	Horn	66°27'9 N., 22° 28'5 W.

Also, a four-mile zone shall be drawn around the following:

49.	Kolbeinsey	67°07'5 N., 18° 36'0 W.
50.	Hvalsbakur	64°35'8 N., 13° 16'7 W.
51.	Geirfugladrangur	63°40'6 N., 23° 17'3 W.

Finally, a four-mile zone shall be drawn from the outermost points and rocks of the island of Grimsey.

ARTICLE 2

In the area defined in article 1 any other foreign fishing activities shall be prohibited in accordance with the provisions of Law No. 33 of 19 June 1922 concerning fishing in territorial waters.

19. India

a. NOTE. India under British rule had followed the traditional 3 mile limit for territorial waters. In A/CN.4/99, page 26, India expressed the view that the maximum breadth of the territorial sea was 12 miles and that

each state was free to fix a practical limit within the 12 miles. Furthermore, no particular geographic configuration of the coast was required as justification for this asserted freedom. A similar view was expressed in the Indian comments on the draft articles on territorial waters of the International Law Commission in A/2934, page 30. A Presidential Proclamation of 22 March 1956, reproduced below, fixed 6 nautical miles as the limit of the territorial sea.

* * * * *

b. PRESIDENTIAL PROCLAMATION OF 22 MARCH 1956

(*The Gazette of India*, No. 81, of 22 March 1956)

* * * * *

“Whereas international law has always recognized that the sovereignty of a state extends to a belt of sea adjacent to its coast;

And whereas international practice is not uniform as regards the extent of this sea-belt commonly known as the territorial waters of the State, and consequently it is necessary to make a declaration as to the extent of the territorial waters of India;

I, Rajendra Prasad, President of India, in the Seventh Year of the Republic, do hereby proclaim that, notwithstanding any rule of law or practice to the contrary which may have been observed in the past in relation to India or any part thereof, the territorial waters of India extend into the sea to a distance of six nautical miles measured from the appropriate base line.”

20. Iran

a. NOTE. An Act relating to the breadth of territorial waters and to the zone of supervision of 19 July 1934 appears in English translation in *U. N. Leg. Series I* (1951) page 81, (Articles 1, 2 and 3 only), and in French in full in *I.C.J., Pleadings, 1951, U.K.-Norway*, II, page 284. In Mouton, *The Continental Shelf*, 1952, Articles 1 and 2 of a Bill approved by the Council of Ministers and submitted to the Majlis on 19 May 1949, is referred to on page 257 and translated on page 10. Mouton cites Volume 5, *Revue Egyptienne de Droit International*, Documents (Territorial Waters) (1949) for his text. The Act of 19 June 1955, printed below, is very similar to this 1949 Bill.

* * * * *

b. ACT OF 19 JUNE 1955 CONCERNING THE EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF ¹¹

ARTICLE 1. As used in this Act, the Iranian term *falat gharreh* has the same meaning as the term “continental shelf” in English and the term *plateau continental* in French.

¹¹ Translation by the United Nations Secretariat from French text of Act.

ARTICLE 2. The sea-bed and subsoil of the submarine areas which are contiguous to the continental and insular coasts of Iran and which are situated on the continental shelf have always been and continue to be under the sovereignty of Iran.

NOTE. 1. In the case of the Caspian Sea, the provisions of international law concerning inland seas shall apply.

ARTICLE 3. Where the above-mentioned continental shelf extends to the coasts of another State or adjoins the territory of a State adjacent to Iran, any disputes concerning the boundary of the continental shelf of Iran shall be settled on equitable principles, and the Government shall take the necessary measures to settle such disputes.

ARTICLE 4. This Act does not amend in any way the provisions of the Act of 24 *Tir* 1313 [19 July 1934] concerning the Delimitation of Territorial Waters and the Zone of Supervision and Surveillance, and that Act remains in force.

ARTICLE 5. This Act does not affect the legal status of the superjacent waters with respect to freedom of navigation and to the installation of submarine cables.

The Government may construct on the continental shelf installations necessary for the exploration and exploitation of its natural resources and may take measures necessary for the safety of such installations.

21. Israel

a. NOTE. Israel's legislation on territorial waters and related subjects had embodied the views of the United Kingdom as the Mandatory Power. This legislation was continued in force by Israel until recently. In a Note of 13 December 1955 from the Foreign Ministry of Israel to the United Nations Secretariat, reference is made to a Government Decision of 11 September 1955 fixing the limit of the maritime frontier at six miles. The text of the Decision is given in an official translation in A/CN.4/99/Add. 1, page 16, and reprinted below from that source. According to *Ibid.*, pages 16-17, this Notice was sent to all countries with which diplomatic relations are maintained.

On 3 August 1952, a Governmental Proclamation on Submarine Areas was promulgated. An official English translation is printed in A/CN.4/99/Add. 1, page 15, and the text also appears in 48 *A. J. I. L., Supp.*, 1954, page 103. Submarine Areas Law 5713 (1953), embodying the Proclamation in domestic legislation, is printed in English translation in A/CN.4/99/Add. 1, page 16. Both texts, as officially translated, are printed below. The texts were made available to the Editor by the Permanent Mission of Israel to the United Nations. Israel's comments on these matters are contained in A/CN.4/19, page 86, A/2456, page 58, and A/CN.4/99/Add. 1, page 12.

b. "GOVERNMENT'S DECISION OF 24 ELUL 5715

(11 September 1955)

NOTICE ON THE MARITIME FRONTIER OF THE STATE OF ISRAEL

The maritime frontier of the State of Israel is placed at a distance of six nautical miles from the coast measured from the low-water line, and the areas of the sea between the low-water line as aforesaid and the maritime frontier, together with the air space above them, constitute the maritime areas of Israel."

* * * * *

c. PROCLAMATION OF 3 AUGUST 1952

WHEREAS recent scientific investigations indicate the presence of mineral wealth and other natural resources in the submarine areas contiguous to the coasts of Israel;

AND WHEREAS it is desirable to take steps to preserve these resources and to assure their availability for the purpose of future research, utilisation and development;

AND WHEREAS several other states have taken steps to exercise jurisdiction over the submarine areas contiguous to their coasts;

THEREFORE the Government of Israel hereby proclaims and publicly announces as follows:

- (1) The territory of the State of Israel shall include the sea-bed and the sub-soil of the submarine areas contiguous to the coasts of Israel and outside the territorial waters to the extent that the depth of the superjacent waters admits of the exploitation of the natural resources of those areas.
- (2) Nothing contained in Paragraph 1 shall affect the character as high seas of the waters as are above the said submarine areas and outside the territorial waters of Israel.

12 Av 5712 (3 August 1952).

by order of the Government

HANNAH EVEN-TOV,

Deputy Secretary to the Government.

* * * * *

d. SUBMARINE AREAS LAW, 5713—1953

1. (a) The territory of the State of Israel shall include the sea floor and underground of the submarine areas adjacent to the shores of Israel but outside Israel territorial waters, to the extent that the depth of the superjacent water permits the exploitation of the natural resources situate in such areas.

(b) Nothing in subsection (a) shall affect the character of the

water superjacent on the said submarine areas, and outside Israel territorial waters, as waters of the high seas.

DAVID BEN-GURION
Prime Minister.

YITZCHAK BEN-ZVI
President of the State.

22. Japan

NOTE. Although Japan, like Iceland, *supra*, is a country whose economy is heavily dependent on fisheries, she has not defined the breadth of her territorial sea in her national legislation, according to a Note of 5 March 1956 to the United Nations Secretariat from the Japanese Ministry for Foreign Affairs. In that Note, it was stated: "It is, however, evident that Japan traditionally maintains that the distance of three miles is the well-recognized and firmly established principle of international law * * *." Japan has been seriously affected by the unilateral claims of other Far Eastern countries to exclusive fishery zones, and, since World War II, has become a party to several multilateral and bilateral treaties relating to conservation of fisheries. See Section III, E, and F, *supra*. Port Regulations prohibiting discharge of noxious materials within 10,000 meters of a port, enacted by Law No. 174 of 1948, as amended by Law No. 98, 24 May 1949, are given in official English translation in *U. N. Leg. Series I*, (1951), page 83. Report No. 152 (December 1951), *Fisheries Program in Japan, 1945-51*, compiled by W. C. Neville, was published in Tokyo in 1951 by the National Resources Section, General Headquarters, Supreme Commander for the Allied Powers, and gives valuable information on developments during that period.

23. Korea

a. NOTE. During the occupation of Japan by the Allied Powers, the "MacArthur Line" established limits for Japanese fishing. Among the waters so forbidden to Japanese fishermen was an extensive area off the coasts of Korea. Subsequently, Korea, by Presidential Proclamation of 18 January 1952, established exclusive fishery zones off its coasts, and declared its sovereignty over the continental shelf and superjacent waters. The Fishery Resources Conservation Law No. 298 of 12 December 1954 established fishery conservation zones. The Proclamation, and Law No. 298, reprinted below, were translated by the United Nations Secretariat. Statements by the Korean Foreign Ministry and by President Rhee of 26 January and 8 February 1952, respectively, purporting to refute Japanese charges against the Proclamation are contained in plain text telegrams in the files of the Department of State. In summary, they allege support of their position in previous actions of other governments, assert that the Proclamation is a conservation measure, and that it does not effect an extension of the territorial sea, and, finally, it is defended as action designed to avoid friction over alleged Japanese encroachments on Korean coastal waters.

* * * * *

b. PRESIDENTIAL PROCLAMATION OF SOVEREIGNTY OVER ADJACENT SEAS, 18 JANUARY 1952

Supported by well-established international precedents and

urged by the impelling need of safeguarding, once and for all, the interests of national welfare and defence, the President of the Republic of Korea hereby proclaims:

1. The Government of the Republic of Korea holds and exercises the national sovereignty over the shelf adjacent to the peninsular and insular coasts of the national territory, no matter how deep it may be, protecting, preserving and utilizing, therefore, to the best advantage of national interests, all the natural resources, mineral and marine, that exist over the said shelf, on it and beneath it, now, or which may be discovered in the future.

2. The Government of the Republic of Korea holds and exercises the national sovereignty over the seas adjacent to the coasts of the peninsula and islands of the national territory, no matter what their depths may be, throughout the extension, as here below delineated, deemed necessary to reserve, protect, conserve and utilize the resources and natural wealth of all kinds that may be found on, in or under the said seas, placing under the Government supervision particularly the fishing and marine hunting industries in order to prevent this exhaustible type of resources and natural wealth from being exploited to the disadvantage of the inhabitants of Korea, or decreased or destroyed to the detriment of the country.

3. The Government of the Republic of Korea hereby declares and maintains the lines of demarcation, as given below, which shall define and delineate the zone of control and protection of the national resources and wealth on, in or beneath the said seas placed under the jurisdiction and control of the Republic of Korea and which shall be liable to modification, in accordance with the circumstances arising from new discoveries, studies or interests that may come to light in future. The zone to be placed under the sovereignty and protection of the Republic of Korea shall consist of seas lying between the coasts of the peninsular and insular territories of Korea and the line of demarcation made from the continuity of the following lines:

- a. From the highest peak of U-Am-Ryung, Kyung-Hung-Kun, Ham-Kyong-Pukdo to the point ($42^{\circ} 15'N - 130^{\circ} 45'E$)
- b. From the point ($42^{\circ} 15'N - 130^{\circ} 45'E$) to the point ($38^{\circ} 00'N - 132^{\circ} 50'E$)
- c. From the point ($38^{\circ} 00'N - 132^{\circ} 50'E$) to the point ($35^{\circ} 00'N - 130^{\circ} 00'E$)
- d. From the point ($35^{\circ} 00'N - 130^{\circ} 00'E$) to the point ($34^{\circ} 40'N - 129^{\circ} 10'E$)
- e. From the point ($34^{\circ} 40'N - 129^{\circ} 10'E$) to the point ($32^{\circ} 00'N - 127^{\circ} 00'E$)

- f. From the point ($32^{\circ} 00'N - 127^{\circ} 00'E$) to the point ($32^{\circ} 00'N - 124^{\circ} 00'E$)
- g. From the point ($32^{\circ} 00'N - 125^{\circ} 00'E$) to the point ($39^{\circ} 45'N - 124^{\circ} 00'E$)
- h. From the point ($39^{\circ} 45'N - 124^{\circ} 00'E$) to the western point of Ma-An-Do, Sin-Do-Yuldo, Yong-Chun-Kun, Pyungan-Pukdo.
- i. From the western point of Ma-An-Do to the point where a straight line drawn north meets with the western end of the Korean-Manchurian borderline.

4. The declaration of sovereignty over the adjacent seas does not interfere with the rights of free navigation on the high seas.

* * * * * *

**c. THE FISHERY RESOURCES CONSERVATION LAW, NO. 298,
PROMULGATED 12 DECEMBER 1954**

ARTICLE 1. The seas lying between the coasts of the peninsular and insular territories of Korea and line of demarcation made from the continuity of the lines mentioned hereunder are hereby defined as the jurisdictional water for the conservation of the fishery resources (hereinafter referred to as the jurisdictional water).

a. Line from the highest peak of U-Am-Ryung, Kyung-Hung-Kun, Ham-Kyung-Pukdo to the point of $42^{\circ} 15'N - 130^{\circ} 45'E$.

b. Line from the point of $45^{\circ} 15'N - 130^{\circ} 45'E$ to the point of $38^{\circ} 00'N - 132^{\circ} 50'E$.

c. Line from the point of $38^{\circ} 00'N - 132^{\circ} 50'E$ to the point of $35^{\circ} 00'N - 130^{\circ} 00'E$.

d. Line from the point of $35^{\circ} 00'N - 130^{\circ} 00'E$ to the point of $34^{\circ} 40'N - 129^{\circ} 10'E$.

e. Line from the point of $34^{\circ} 40'N - 129^{\circ} 10'E$ to the point of $32^{\circ} 00'N - 127^{\circ} 00'E$.

f. Line from the point of $32^{\circ} 00'N - 127^{\circ} 00'E$ to the point of $32^{\circ} 00'N - 124^{\circ} 00'E$.

g. Line from the point of $32^{\circ} 00'N - 124^{\circ} 00'E$ to the point of $39^{\circ} 45'N - 124^{\circ} 00'E$.

h. Line from the point of $39^{\circ} 45'N - 124^{\circ} 00'E$ to the western point of Ma-An-Do, Sin-Do-Yuldo, Yong-Chun-Kun, Pyung-An-Pukdo.

i. Line from the western point of Ma-An-Do to the point where a straight line drawn north meets with the western end of the Korean-Manchurian borderline.

ARTICLE 2. Any person who desires to engage in fishing in the

jurisdictional water is required to obtain a permission from the competent Minister.

ARTICLE 3. Any person who violated the preceding Article shall be punished by a penal servitude or an imprisonment not exceeding three years, or by a fine not exceeding five hundred thousand Hwan, and any fishing vessel, equipment, catch, and cultured and manufactured product which are owned or possessed by such person shall be confiscated.

ARTICLE 4. In the search for the offence provided in the preceding Article, the officers and sailors aboard Naval vessels, and other officials determined by Presidential Decree may carry out the functions of the judicial police officers.

In conducting the search provided in the preceding paragraph, they may, if necessary, bring home any vessel which violated the provisions of this Law.

If a vessel excites suspicion of violating Article 2, they may halt, visit, search and make any other necessary disposition of a vessel, even if such a vessel is only a vessel in transit.

SUPPLEMENTARY REGULATIONS

A permission, license or notice in force on 19 February 1952 shall be regarded as if it were obtained in accordance with this Law.

This Law shall become effective on the day of its promulgation.

24. Mexico

a. NOTE. Mexico was one of the earliest countries to make a claim to the continental shelf. The Presidential Declaration with respect to continental shelf, 29 October 1945, is given in English translation in *N. W. C., I. L. Documents, 1948-49*, page 185. Another English translation by the United Nations Secretariat appears in *U. N. Leg. Series I*, (1951), page 13. Extracts from an English translation by the U. S. Embassy in Mexico are printed in *I. C. J., Pleadings, 1951, U. K.-Norway*, II, page 253. A Presidential Decree of 25 February 1949, translated by the United Nations Secretariat, incorporating in the property of "Petróleos Mexicanos" the subsoil of the lands covered by the territorial waters of the Gulf of Mexico and other lands specified therein, is printed in *U. N. Leg. Series I*, (1951), page 14. This translation is reprinted below. Mexican laws concerning earlier claims to 9 miles of territorial waters may be found, *Ibid.*, page 84, *et seq.* In accordance with the final paragraph of the 1945 Decree, the Mexican Executive sent to the Mexican Congress proposed amendments to the Mexican Constitution to carry out the Decree. These have apparently not been enacted. *Document 2 (English)* of the Pan American Union, *Background Material on the Juridical Aspects of the Continental Shelf and Marine Waters*, for the Ciudad Trujillo Conference of 1956. A Note from the Mexican Minister of Foreign Affairs to the Norwegian Legation in Mexico, of 6 September 1949, states that the 9 mile claim remains in force. *I. C. J., Pleadings, 1951, U. K.-Norway*, III,

page 706. A similar statement and other comments on territorial waters are contained in A/2934, page 30.

Mexican enforcement of its claim to 9 miles against United States fishing vessels has led to numerous incidents that have been reported in the press and fishery publications. Diplomatic correspondence concerning these seizures, and seizures by other countries in enforcement of their claims have not been generally available for publication. The Department of State has made available to the Editor one such Note of Protest concerning Mexican seizures of United States fishing vessels in 1945 for alleged violation of the 9 mile limit. This United States Note of 14 January 1948 is reproduced below. According to *Flashes*, a publication of the National Fisheries Institute, Inc., of 10 August 1956, page 2, there have been numerous seizures of United States shrimp vessels by Mexican gunboats since 1950, and it is claimed that 8 shrimp trawlers have been seized more than 9 miles off the Mexican coast since 21 April 1956. This situation continues. A recent incident involved the seizure of an American shrimp boat and the wounding of the captain by gunfire. *The New York Times*, 14 November 1956, page 1, col. 3. The Mexican attitude toward these activities is reported in *The New York Times*, 18 November 1956, page 13, col. 1.

* * * * *

b. PRESIDENTIAL DECREE INCORPORATING IN THE PROPERTY OF "PETRÓLEOS MEXICANOS" THE SUBSOIL OF THE LANDS COVERED BY THE TERRITORIAL WATERS OF THE GULF OF MEXICO AND OTHER LANDS SPECIFIED THEREIN, 25 FEBRUARY 1949. *DIARIO OFICIAL*, VOL. 173, NO. 10 (11 MARCH 1949), P. 4.¹²

. . . In the exercise of the powers conferred upon me by article 89, paragraph 1, of the General Constitution of the Republic, and in virtue of the provisions of article 1, article 6, paragraph II, and article 7 of the Regulatory Act, issued in respect of petroleum, under article 27 of the Constitution, and

CONSIDERING:

I. That, according to the scientific surveys made, the subsoil of the lands comprised in the continental shelf may contain deposits of hydrocarbons capable of being utilized and exploited by the nation as was recognized in the declaration of 29 October 1945 by the Federal Executive which claimed for the nation the whole submarine shelf or platform adjacent to the coasts of the Republic and of its islands;

II. That in accordance with that declaration the Executive on 6 December 1945 submitted to the Congress of the Union and of the State Legislatures for consideration a constitutional amendment for the juridical restoration to the nation of the said continental shelf, with its natural wealth, in order that the nation may proceed to its proper exploitation;

¹² Translation by the Secretariat of the United Nations.

III. That, in the case of hydrocarbons, the jurisdiction of the Government of the Republic is indisputable, under the express terms of article 27, paragraph 4, of the Federal Constitution, whereby the nation is empowered to undertake the exploitation of the petroleum resources of the subsoil of the continental shelf, through the intermediary of the Public Petroleum Institution known as *Petróleos Mexicanos* and in accordance with the system of grants established in the Regulatory Act issued under the above-mentioned article 27 of the Constitution in respect of petroleum, I am pleased to issue the following

DECREE:

ARTICLE 1. The subsoil of the lands covered by the territorial waters of the Gulf of Mexico adjacent to the zone included between the Barra de Santecomapan, State of Veracruz, and the Barra de Paso Real, State of Campeche, to a distance of five kilometres from the low water mark, is hereby included in the property of *Petróleos Mexicanos*;

ARTICLE 2. The subsoil of the lands covered by the waters of the lagoons of Carmen, Machona, Mecoacán and Términos in the States of Campeche and Tabasco, from the average high water mark in the said lagoons is also incorporated in the property of *Petróleos Mexicanos*; and

ARTICLE 3. The Secretariat of the Economy shall proceed to issue to *Petróleos Mexicanos* the title deeds relating to the lands the subsoil of which is hereby incorporated in the property of that institution.

* * * * *

c. UNITED STATES PROTEST NOTE OF 14 JANUARY 1948

"I have the honor to refer to your Excellency's note No. 52602 of February 18, 1947, concerning the interception and detention, in September, 1945, of four United States fishing vessels which had been operating off the coasts of the State of Campeche.

"In the note under reference the statement is made that the territorial waters of Mexico, in the relations between the United States and Mexico, have an extension of nine miles, which extension, it is stated, is derived from interpretations of Article V of the Treaty of 1848 and of Article I of the Treaty of 1853 between the United States and Mexico. The Government of the United States maintains, and has consistently maintained, that the general territorial jurisdiction of Mexico, so far as United States nationals are concerned, extends three miles seaward from the coast measured from the low-water mark. In this regard Your Excellency's attention is invited to this Embassy's note of June 3, 1936,

addressed to your Excellency's Government, which, after discussing at length the Treaty of 1848, pointed out that it furnished no authority for the Government of Mexico to claim generally that the territorial waters of Mexico extend nine miles from the coast. The same conclusion necessarily applies to the Treaty of 1853 which, in regard to the question of territorial waters, introduced no change in the terms of meaning of the Treaty of 1848.

"With reference to Article 17, Section II, of the General Law of National Wealth referred to in Your Excellency's note and stated to be the justification of the seizures, the United States cannot, so far as that law purports to define the territorial waters of Mexico as coastal waters to the distance of nine nautical miles from land, accept its application to United States fishing vessels operating between three and nine miles off the coast. Further, the Government of the United States continues, as in 1936, to reserve all rights of whatever nature so far as concerns any effects upon American commerce from enforcement of this legislation, or of similar legislation which purports to extend the limit of general jurisdiction beyond three nautical miles.

"Your Excellency's note states also that the vessels at the time of apprehension were four miles from the coast. Although on the basis of evidence available at this time it would appear that the actual distance was seventeen miles, it is not the intention of this Government to discuss this question which is one of fact. The violation of American rights is equally serious whether the seizure took place at the lesser or the greater distance, both being outside the territorial waters in which general jurisdiction could properly be exercised under the circumstances.

"In the sincere hope that the proposed negotiations between the Government of the United States and Your Excellency's Government with respect to fisheries matters will remove all future difficulties in what Your Excellency rightly terms a routine matter of coast patrol, this Government does not at this time desire to press the issue of the unwarranted seizures of the vessels mentioned above or of other seizures which occurred recently. It does, however, desire to indicate to the Government of Mexico that it has not changed the position set forth in the note of June 3, 1936, and that it cannot recognize as justified any interference of this character with fishing vessels flying the flag of the United States when such vessels are situated at a distance of more than three miles from the coasts of Mexico."

25. Nicaragua

NOTE. The first official claim of Nicaragua to the continental shelf was

contained in the Political Constitution, 22 January 1948, Article 2. An English translation of Article 2 appears in N. W. C., *I. L. Documents*, 1948-49, page 192. In May 1949, the Congress of Nicaragua approved a declaration that: "the continental shelves, referred to in Article 2 of the Constitution as an integral part of Nicaraguan territory, is that part of the land covered by marine waters to a depth of 200 meters measured from the low-water mark." *C. I. J.—24, (English), Handbook for the Third Meeting of the Inter-American Council of Jurists*, Pan American Union, 1955, page 24. The Political Constitution of 1 November 1950, Article 5, makes claim to national territory in almost the same language as Article 2 of the 1948 Constitution. An English translation by the United Nations Secretariat of Article 5 is printed in *U. N. Leg. Series I*, (1951), page 15. A claim to the "submerged foundations (zócalos submarinos)" is added in Article 5.

26. Norway

a. NOTE. The Norwegian base-line "system" as applied to that part of Norway situated northward of 66°28'48" N. latitude by virtue of the Royal Decree of 12 July 1935, as amended 10 December 1937, was upheld as against the United Kingdom in the Fisheries Case, (*United Kingdom v. Norway*), International Court of Justice Reports, 1951, page 116, *et seq.*, reprinted Section I, A, *supra*. The voluminous correspondence, collections of national laws, arguments written and oral, and other documentation, are contained in *I.C.J., Pleadings, 1951, U.K.-Norway*, Vols. I-IV. There is also a fifth volume containing detailed maps of the disputed area.

A Royal Decree of 18 July 1952, as amended by Royal Decree of 17 October 1952, extended this Norwegian base-line "system" to that part of Norway southward of 66°28'48" N. latitude. The text of this Decree, as amended, translated by the United Nations Secretariat, is printed below. A Decree of the Crown Prince Regent of 30 June 1955 applied the base-line "system" to Jan Mayen Island waters.

In addition to the base-line "system," Norway has claimed 4 miles as the breadth of its territorial sea, as measured from the base lines. This claim of 4 miles was not contested by the United Kingdom in the Fisheries Case, *supra*. Furthermore, Norwegian legislation with respect to fisheries off its coasts has asserted the power to prohibit and regulate outside territorial waters. The Herring and Brisling Fisheries Act of 25 June 1937, as amended up to 1 December 1954, provides in Article 1: "This Act shall apply to herring and brisling fishing off the Norwegian coast, irrespective of whether the fishing is carried on inside or outside the Norwegian territorial sea." Article 81 of the Act establishes penalties. The Provisional Law of 6 May 1938 for the Conservation of Fisheries, and Royal Decrees of 5 May 1939 and 13 June 1947, pursuant to Article 7 of the 1938 Law, assert similar powers. French translations of the 1938 Law and the subsequent Royal Decrees appear in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, pages 562-564. Norwegian comments on fishery problems and the breadth of the territorial sea are contained in A/2456, page 62, A/2934, page 35, and A/CN.4/99/Add. 1, page 46.

In January and February of 1956, sixteen Soviet fishing vessels were seized by Norwegian authorities for fishing within Norwegian waters. They were fined about \$88,000, said to be the heaviest fines ever assessed by the Norwegian courts in one case. See *The New York Times*, January 31, February 1, 2, 3, and 7, 1956. Soviet fishing vessels were reported recently to

have been chased out of Norwegian waters by Norwegian patrol boats. *The New York Times*, September 2, 1956, page 2, col. 4.

* * * * *

b. ROYAL DECREE OF 18 JULY 1952, AS AMENDED 17 OCTOBER 1952

The boundary of the fishery limits South of Traena (66° 28'8N) shall be drawn outside, and parallel with, straight base-lines drawn between the following points:

Number of point	Name of point	(Metric Measurement)	
		Position of point N. Lat.	Long. E. of Greenwich
48	West side of Bøvarden.....	66° 28'8	11° 56'6
49	Lundbøen	66° 07'5	11° 33'6
50	Svinglebåen	65° 38'5	10° 16'2
51	West side of Høgtraken.....	65° 23'7	11° 01'7
52	West side of Hummelvaer-Svartflesa.....	64° 58'9	10° 36'7
53	West side of Fråholmsnes-Svartflesa.....	64° 54'9	10° 31'8
54	West side of Ertenbraken.....	64° 46'9	10° 27'0
55	Utgrunnskjaer	64° 12'9	9° 16'5
56	Midtre Springeren	63° 54'7	8° 27'7
57	Hilbåen off Andholmsleden.....	63° 53'0	8° 25'5
58	The most north-westerly of the Dreitflu...	63° 50'0	8° 20'0
59	North-west side of Flesa.....	63° 32'2	7° 49'7
60	Outer Smoksbåen	63° 28'2	7° 44'1
61	Outer Skatbåen	63° 26'4	7° 42'0
62	Fogna	63° 07'1	7° 09'8
63	Outermost Kjeldskjaer	62° 48'9	6° 15'9
64	Skreia	62° 41'1	5° 59'3
65	The dry skerry north of Skjaerkalven off Svinøy	62° 20'2	5° 16'2
66	The most westerly of the Bukketyve.....	61° 11'2	5° 03'7
67	Steinen	62° 01'7	4° 54'3
68	The most southerly of the Vetrunger.....	61° 56'3	4° 49'4
69	The most westerly of the Senninger.....	61° 39'1	4° 34'3
70	The outermost reef off the Nordholmer...	61° 04'4	4° 30'6
71	The north-west point of Steinøy.....	61° 02'1	4° 30'3
72	The west side of Mulen.....	61° 01'7	4° 30'3
73	The west point of Gangvarskjaer.....	60° 38'3	4° 43'3
74	Herboskjaeret	60° 18'8	4° 53'5
75	The most westerly Hufteskjaer.....	60° 15'7	4° 55'1
76	The west point of Fugløy.....	60° 00'7	5° 00'6
77	Ternesekjaer	59° 48'0	5° 03'0
78	Boaskjaer	59° 38'5	5° 04'8
79	The most westerly point of Utsira.....	59° 18'4	4° 51'5
80	The north-west point of the westernmost of the Spannholmer.....	59° 17'0	4° 50'9
81	The south-west point of the westernmost of the Spannholmer.....	59° 16'9	4° 50'9
82	Lausingen	59° 16'3	4° 51'1

Number of point	Name of point	(Metric Measurement)	
		Position of point N. Lat.	Long. E. of Greenwich
83	Sveljeskjaer	59° 08'5	5° 10'8
84	The westernmost dry skerry off Imsen....	59° 00'5	5° 22'1
85	Outer Faksen off Kjør.....	58° 52'6	5° 25'6
86	Jaerens Rev	58° 45'0	5° 29'6
87	Oyrestainen	58° 40'1	5° 32'6
88	Obrestadodden	58° 39'4	5° 33'3
89	Horrodden	58° 33'6	5° 39'5
90	Ørenodden	58° 32'9	5° 40'3
91	Jaer Rauna	58° 31'6	5° 42'5
92	The outermost skerry south of Ekerøy light	58° 25'6	5° 52'3
93	The westernmost of the Røsholmer.....	58° 25'3	5° 52'8
94	South Svetling	58° 23'7	5° 58'4
95	Flatskjaer off the Svåholmer.....	58° 22'3	5° 02'9
96	Springeren off Festre Knappene.....	58° 17'1	6° 19'0
97	The outermost skerry off Skarvodden on Lista	58° 06'7	6° 33'6
98	The most south-westerly point on Brek- neholmen	58° 05'6	6° 35'3
99	The southern point of Gråhaugen.....	58° 05'0	6° 36'3
100	The outermost skerry off Lille Døsen....	58° 04'1	6° 38'0
101	The outermost skerry off Døsen.....	58° 03'8	6° 38'8
102	West Kattestein	58° 03'4	6° 40'1
103	The outermost skerry off Rauna.....	58° 03'3	6° 40'7
104	Bispen	57° 59'0	7° 00'6
105	The southernmost skerry in the Gjeslinger near Utvåre	57° 57'6	7° 12'5
106	The southernmost skerry off outer Odden..	57° 57'4	7° 34'2
107	Ytreskjaer	57° 57'6	7° 37'2
108	The most south-easterly Gåsskjaer.....	57° 57'9	7° 39'1
109	West Ballastskjaer	57° 58'4	7° 41'3
110	Lille Svarten	58° 02'8	8° 01'5
111	Meholmsskjaer	58° 05'5	8° 11'9
112	Langbåen reef	58° 06'4	8° 15'4
113	The outermost skerry off the Gjeslinger near Gåsen (light).....	58° 13'0	8° 29'0
114	Hesnesbregen	58° 18'4	8° 39'9
115	The most south-easterly skerry in Lossene	58° 21'3	8° 44'6
116	Brenningene beacon	58° 28'5	8° 56'3
117	Mål	58° 31'2	9° 00'5
118	Store Sildskjaer (beacon).....	58° 39'7	9° 12'7
119	The outermost skerry or rock east of the southwest point of Jomfruland.....	58° 50'0	9° 33'4
120	Skerry south of Tvisteinen lighthouse....	58° 56'1	9° 56'5
121	Skerry off the southern point of Ertholmen in Rauer	58° 58'6	10° 14'1
122	Midtre Heiaflu	58° 56'8	10° 53'4
123	Frontier post XX (G.B. 2, buoy).....	58° 56'5	10° 55'4

ROYAL DECREE OF 17 OCTOBER 1952

The Royal Decree of 18 July 1952, setting out the base-line reference-points with regard to the fishery limits South of Traena, shall be amended in the following respects:

Number of point	Name of point	(Metric Measurement)	
		Position of point N. Lat.	Long. E. of Greenwich
50	Svinglebåen	65° 38'5	11° 16'2
95	Flatskjaer off the Svåholmer.....	58° 22'3	6° 02'9
113	The outermost skerry of the Gjeslinger near Gåsen (light).....	58° 13'0	8° 29'0

27. Pakistan

NOTE. A Declaration by the Governor-General, 9 March 1950, asserted that “* * * the seabed along the coasts of Pakistan extending to the one hundred fathom contour into the open sea shall, with effect from the date of this declaration, be included in the territories of Pakistan.” The complete text is printed in *U. N. Leg. Series I* (1951), page 303.

28. Panama

NOTE. Article 209 of the Constitution, 1 March 1946, claims as belonging to the State and for public use: “(4) The aerial space and the submarine continental shelf which appertain to the national territory; * * *.” The wording is taken from the text of Article 209 as translated by the United Nations Secretariat in *U.N. Leg. Series I*, (1951), page 15. Another translation of Article 209’s introductory clause and (4) appear in *N.W.C., I.L. Documents, 1948-49*, page 186. Decree No. 449, for the Regulation of Shark Fishing by Foreign Vessels in the Waters under the Jurisdiction of the Republic, 17 December 1946, Article 3, as translated by the United Nations Secretariat and printed in *U.N. Leg. Series I* (1951), page 16, reads as follows: “For the purposes of fisheries in general, national jurisdiction over the territorial waters of the Republic extends to all the space above the seabed of the submarine continental shelf. For this reason the product of any fishing within the limits indicated is considered a national product, and is therefore subject to the provisions of the present decree.”

29. Peru

NOTE. The tripartite claim of Chile-Ecuador-Peru to a maritime zone of 200 miles for exclusive exploitation of fisheries, and related developments, together with the documents, may be found in Section II, D, *supra*. Shortly after Chile’s unilateral claim to such a 200 mile zone (see Chile, *supra*) Peru made a similar unilateral claim in Presidential Decree No. 781, concerning submerged continental or insular shelf, 1 August 1947. English translations of this Decree appear in *U. N. Leg. Series I*, (1951), page 16; *N. W. C., I. L. Documents, 1948-49*, page 190; and a French translation in *I. C. J., Pleadings, 1951, U. K.-Norway*, III, page 709. The United Kingdom Protest Note to Peru is printed in *Ibid.*, II, page 747. The United States Protest Note to Peru appears in *U. N. Leg. Series I*, (1951), page 17; *A/CN.4/19*, page 113, and

I. C. J., Pleadings, 1951, U. K.-Norway, IV, page 602. A representative United States Protest Note, that to Chile, is reprinted under Chile, *supra*, as is also the text of the Swedish Protest Note to Chile. Sweden sent an identical Note to Peru. References to protests by other countries are also collected under Chile, *Note, supra*.

Supreme Resolution No. 121, granting concessions with respect to submerged oil fields, of 27 April 1948, is printed in English translation by the United Nations Secretariat in *U. N. Leg. Series I*, (1951), page 18. Article 14(4) of Law No. 11780 (Petroleum Law) of 12 March 1952 defines the continental shelf zone as "the zone included between the limit of the coastal zone and an imaginary line traced at sea at a constant distance of 200 miles of the low water mark of the continental littoral." *C. I. J.-24, (English), Handbook for the Third Meeting of the Inter-American Council of Jurists*, Pan American Union, 1955, pages 22-23.

30. Philippines

a. NOTE. The Petroleum Act of 1949 provides in Article 3, entitled State Ownership, in part as follows: "All natural deposits or occurrences of petroleum or natural gas in public and/or private lands in the Philippines, whether found * * * on the continental shelf, or its analogue in an archipelago, seaward from the shores of the Philippines which are not within the territories of other countries, belong to the State, inalienably and imprescriptibly." The quotation is taken from Article 3, as reprinted in *U. N. Leg. Series I* (1951), page 19.

In A/CN.4/99, pages 28-29, the Permanent Mission of the Philippines to the United Nations sets forth the position of that country on territorial waters. Earlier statements of the same position may be found in A/2456, page 64, and A/2934, page 36. See, also, A/CN.4/19, page 102. A Note of 12 December 1955 from the Philippine Foreign Ministry to the United Nations Secretariat, reprinted below, summarizes their claims.

* * * * *

b. NOTE FROM PHILIPPINE FOREIGN MINISTRY TO THE UNITED NATIONS SECRETARIAT, 12 DECEMBER 1955

* * *

"The official pronouncement of the Government of the Republic of the Philippines, as contained in its diplomatic notes to various countries, is as follows:

"The position of the Philippine Government in the matter is that all waters around, between and connecting the different islands belonging to the Philippine Archipelago irrespective of their widths or dimensions, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. All other water areas embraced in the imaginary lines described in the Treaty of Paris of December 10, 1898,¹³ the treaty con-

¹³ Martens, *Nouveau Recueil général de traités*, 2ème série, tome XXXII, p. 74.

cluded at Washington, D. C., between the United States and Spain on November 7, 1900,¹⁴ and the Agreement of January 2, 1930, between the United States and the United Kingdom,¹⁵ and the Convention of July 6, 1932 between the United States and Great Britain,¹⁶ as reproduced in Section 6 of Act No. 4003 and Article I of the Philippine Constitution, are considered as maritime territorial waters of the Philippines for purposes of protection of our fishing rights, conservation of our fishing resources, enforcement of revenue and anti-smuggling laws, defense and security, etc.

"It is the view of our Government that there is no rule of international law which defines or regulates the extent of the inland waters of a State."

31. Roumania

NOTE. Decree No. 39 of 28 January 1956, concerning the regulation of the regime of territorial waters of the People's Republic of Roumania, asserts in Article 1 a claim to territorial waters of 12 miles. Article 2 claims the subsoil and airspace within the 12 mile limit. A letter, October 3, 1956, from the Counselor of the Royal Swedish Embassy to the Editor, confirms that Sweden sent Roumania a Note of Protest concerning a previous Roumanian claim to extensive territorial waters.

32. Saudi Arabia

NOTE. Royal Pronouncement concerning the policy of the Kingdom of Saudi Arabia with respect to the subsoil and sea bed of areas in the Persian Gulf contiguous to the coasts of the Kingdom of Saudi Arabia, 28 May 1949, appears in English translation in N. W. C., *I. L. Documents, 1948-49*, page 195; *U. N. Leg. Series I*, (1951), page 22; 43 *A. J. I. L., Supp.*, 1949, page 156; and *I. C. J., Pleadings, 1951, U. K.-Norway*, II, page 259. Decree No. 6/4/5/3711, defining the territorial waters of the Kingdom, 28 May 1949, appears in English translation in N. W. C., *I. L. Documents, 1948-49*, page 196; *U. N. Leg. Series I*, (1951), page 89 (Articles 5 and 9 only); 43 *A. J. I. L. Supp.*, 1949, page 154; and *I. C. J., Pleadings, 1951, U. K.-Norway*, II, page 260. The United States Protest Note of 19 December 1949 against this Decree appears in *Ibid.*, IV, page 601. No Note of Protest from the United Kingdom has been found. This Decree closes bays between headlands and draws lines between islands not more than 12 miles apart, and encloses groups of islands. See Young, "Saudi Arabian Offshore Legislation," 43 *A. J. I. L.* 530 (1949). See, also, J. Y. Brinton, "Jurisdiction over sea-bed resources and recent developments in Persian Gulf Area," 5 *Revue Egyptienne de Droit International* 131 (1949). The texts of the two Decrees are reprinted in *Ibid.*, Vol. 5, pp. 342-343 (1949).

¹⁴ *Ibid.*, p. 82.

¹⁵ *Ibid.*, 3ème série, tome XXVII, p. 58.

¹⁶ *Ibid.*, p. 66.

33. Sweden

NOTE. Sweden's views and practice with respect to base lines and a 4 mile breadth of territorial waters is similar to but not identical with Norway. Various Swedish legislation and memoranda of position are printed in French in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, pages 714-736, and IV, page 620. Royal Notice No. 317 of 5 June 1953, Concerning the Peacetime Division of the Armed Forces and the Division of the Kingdom into Military Districts defines territorial waters for this purpose (Footnote to Annex II—Norrland Coast Naval District) as: "(a) harbours, harbour entrances and bays along the coasts of the Kingdom together with other maritime waters inshore of and between the islands, islets and drying rocks off the coasts; and (b) all other maritime waters up to a distance of four nautical miles, or 7,408 meters, from the land domain of the Kingdom or from lines representing the seaward boundary of the waters referred to in (a), but not beyond the limit, as specifically determined, of another country's territorial waters." Similar definitions are contained in earlier Swedish legislation, some of which is printed in *I. C. J. Pleadings*, cited, *supra*.

In A/CN.4/99, page 30, Sweden expresses a preference for a 6 mile limit as the breadth of territorial waters recognized by international law, with 12 miles exceptionally when justified historically. The "system" of base lines employed in Swedish practice is explained and supported. Earlier Swedish statements may be found in A/2934, page 37, and A/2456, page 65. A recent Note by Torsten Gihl, "The Limits of Swedish Territorial Waters," is in 50 *A.J.I.L.* (1956), page 120. Exchange of Notes in 1951 between Sweden and the Soviet Union concerning the limits of territorial waters in the Baltic are reprinted in *Union of Soviet Socialist Republics*, 36, c, *infra*. Notes by Sweden to Chile and Ethiopia are reprinted, 6 and 15, *supra*.

34. Turkey

NOTE. In a Note of 2 March 1956 from Turkey's Permanent Mission to the United Nations, A/CN.4/99, page 37, at page 40, the view is expressed that "the 12-mile limit (for territorial waters) has already obtained the general practice necessary for its acceptance as a rule of international law." No official text asserting this claim has been found. A Turkish claim to 6 miles is listed in previous International Law Commission documents. On 16 July 1956, a further Note from Turkey's Permanent Mission to the United Nations, for the Secretariat, stated that a new law on Turkish territorial water limits was being prepared and that it would result in important modifications to previous legislation. For discussion of earlier Turkish provisions on territorial waters, see comments by Israel in A/CN.4/19, page 87.

35. United Kingdom, Arab Protectorates, and Colonies

a. CONTINENTAL SHELF

NOTE. The United Kingdom was the first country to take official action with respect to the continental shelf in its Treaty with Venezuela relating to the submarine areas of the Gulf of Paria, 26 February 1942, summarized *supra*, Section V. The text is printed in *U.N. Leg. Series I* (1951), page 44,

The United Kingdom Order in Council of 6 August 1942 annexing the submarine areas allocated to the United Kingdom under the Treaty is in *Ibid.*, page 46. The texts of Proclamations by the Sheikhs of the Arab States under the protection of the United Kingdom, issued in 1949, claiming the contiguous sea bed and subsoil of the Persian Gulf, as supplied in English translation by the British Foreign Office, are printed in *Ibid.*, pages 23–30. Orders in Council claiming the continental shelf for the Bahamas, Jamaica, British Honduras, and Falkland Islands, are printed *Ibid.*, pages 31, 33, 304 and 305. The Treaty, Orders in Council, and Proclamations contain specific provisions preserving the right of free navigation and fisheries in the waters above the areas claimed. Orders in Council of a similar character have been made for British Guiana, 1954; Brunei, 1954; North Borneo, 1954; and Sarawak, 1954. The Order in Council for British Guiana, 1954, which is typical of all the claims referred to above, provides as follows:

“2. The boundaries of the Colony of British Guiana are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of British Guiana.

“3. Nothing in this order shall be deemed to affect the character as high seas of any waters above the said area of the continental shelf.”

The text of the above British Guiana (Alteration of Boundaries) Order in Council, 1954, is from *Statutory Instruments, 1954, No. 1372, Colonies, Protectorates and Trust Territories*.

* * * * *

b. TERRITORIAL WATERS AND FISHERIES

NOTE. The United Kingdom has maintained vigorously that the limit of territorial waters is 3 nautical miles from the low-water mark. The base-line systems and closing of seas and bays of greater than 10 mile width, employed by other States, *supra*, is regarded as invalid. The United Kingdom has stated her viewpoint in the Fisheries Case (*United Kingdom v. Norway*), Section I, A, *supra*, in numerous Notes of Protest sent to other States whose claims exceeded these limits, and in Treaties with other States. The most recent assertion of the United Kingdom's traditional position may be found in the Exchange of Notes with the U.S.S.R. (1956), reprinted, Section IV, B, *supra*. References to all of these materials have been made throughout this book. The United Kingdom's comments on the 3 mile rule may be found in A/CN.4/99/Add. 1, pages 61–63, and A/2934, pages 41–43; on the continental shelf, A/2456, page 68; and on fisheries conservation, A/CN.4/99/Add. 5. A Statement of United Kingdom Policy on Territorial Waters, 14 December 1953, is reprinted below, (1).

The national legislation of the United Kingdom which refers to the 3 mile rule is voluminous. Starting with the Territorial Waters Jurisdiction Act, 1878, the reference to a 3 mile limit has been quite consistent. There have been occasional assertions of power to act beyond 3 miles for certain purposes, such as in the Sea Fisheries Act, 1868, as amended in 1875, which, in Article 67, asserts power to enact bye-laws for Irish Sea oyster beds up to 20 miles. Certain legislation employs the device of indirectly prohibiting acts outside 3 miles by punishing consequences within, as in the Trawling in

Prohibited Areas Prevention Act, 1909, an aftermath of *Mortensen v. Peters*, Scotland, Court of Justiciary, 1906.

Legislation for the Colonies has with equal consistency defined territorial waters as 3 miles from low-water mark, or occasionally as meaning what is “* * * deemed by international law to constitute the territorial waters.” The Bermuda Interpretation Act, 9 July 1951, Section 5(f), defines territorial waters as “* * * within a line drawn three nautical miles outside the outer reefs of these Islands.” There is a similar definition in the Cyprus Interpretation Law, 20 September 1935. The Fiji Islands Fisheries Ordinance, as amended in 1951, measures 3 miles from the seaward side of reefs fronting the coast, and the Gilbert and Ellice Islands Fisheries Ordinance, 1946, measures from the reef. The Federation of Malaya Interpretation and General Clauses Ordinance, 1948, uses the “deemed by international law” language, *supra*, as does Sarawak Interpretation Ordinance, 1953. The Federated Malay States Fisheries Enactment, 1937, in Section 14 (ii) (e), (f) and (g), gives the Ruler of each State the asserted power to prohibit, regulate, or license fishing in areas “without territorial waters.” The Mauritius Districts Ordinance, 1 September 1875, Section 3, defines the seacoast as 3 miles but adds a proviso that “* * * the Governor may by proclamation extend the seaward limits of Districts to a greater distance than three miles.” The Somaliland Protectorate Fisheries Ordinance of 1934 defined territorial waters as 3 miles from low-water mark. However, in the Customs Ordinance, 1952, the measurement was 3 miles from outer reefs.

Many of the laws mentioned in this and the preceding note, and most of the Protest Notes are contained in *I.C.J., Pleadings, 1951, U.K.-Norway*, Vols. I-IV, as well as the laws cited *supra* as being in *U.N. Leg. Series I* (1951). The Bahrain Proclamation of 5 June 1949 was translated and printed also in 43 *A.J.I.L., Supp.*, 1949, page 185. The numerous treaties concerning fisheries and fishing limits to which the United Kingdom is a party are printed, *supra*, in Sections III and IV.

* * * * *

(1) STATEMENT OF UNITED KINGDOM POLICY ON TERRITORIAL WATERS, 14 DECEMBER 1953

NOTE. The following official Statement was made in the House of Commons, 14 December 1953, by Selwyn Lloyd, then Minister of State for Foreign Affairs. *Parliamentary Debates, House of Commons*, 14 December 1953 (Vol. 522, p. 36). *The Times*, London, 15 December 1953, p. 2, col. 5.

* * *

“For some time past her Majesty’s Government in the United Kingdom have had under consideration the question whether the territorial waters round the coasts of the United Kingdom and overseas territories for which her Majesty’s Government are responsible should be re-defined in the light of the judgment delivered by the International Court of Justice on December 18, 1951, in the Anglo-Norwegian fisheries case. After full consideration of the matter they have come to the conclusion that there should be no change; these territorial waters will, therefore, continue to be delimited by a line drawn three miles from low-water mark, or, in the case of

bays and estuaries, from a closing line drawn at the first point where they narrow to 10 miles in width.

"The judgment in the Norwegian case depended on the facts of that case. In the view of her Majesty's Government it ought not to be inferred from that judgment that, as a principle of international law, a baseline drawn in the manner authorized by that judgment in that particular case would necessarily be applied to all or any other coasts.

"Her Majesty's Government recognize that, legal considerations apart, an extension of United Kingdom territorial waters by means of the drawing of baselines, such as have been adopted along the indented coast of northern Norway, would be of some advantage to British inshore fisheries. Her Majesty's Government sympathize with the point of view of the inshore fishermen and are conscious of the effect on them of their decision. Her Majesty's Government are also informed that an extension of territorial waters would be of some advantage in certain colonies and other oversea territories for which her Majesty's Government are responsible, and they have taken this fully into account. Her Majesty's Government have, however, come to the conclusion that wider considerations, arising out of the naval, mercantile, and deepsea fishery positions of this country and like interests in the other territories concerned, must take precedence.

"Her Majesty's Government consider that the true interests of all seafaring nations are best served by the greatest possible freedom to use the seas for all legitimate maritime activities and they view with concern the increasing encroachments on the high seas which have taken place in recent years in many parts of the world.

At the same time, her Majesty's Government will continue to co-operate in securing the fullest possible measure of conservation of fisheries by means of international agreement through the commissions set up under the International Fisheries Conventions."

36. Union of Soviet Socialist Republics

a. CONTINENTAL SHELF

NOTE. In A/CN.4/38, Memorandum on the Soviet Doctrine and Practice with respect to the Regime of the High Seas (prepared by the Secretariat), 21 November 1950, page 10, it is stated that the Soviet Union has made no continental shelf claim nor has it responded to such claims by others. The Soviet Union national on the International Law Commission expressed various objections in the course of the debates on the provisional articles concerning the continental shelf but recorded no dissent to the substance of these articles when the final Report on the Law of the Sea was adopted by the Commission in Geneva in 1956. The Soviet Union has never submitted any written comments with respect to these or any of the other articles in the Report on the Law of the Sea.

* * * * *

b. GENERAL POSITION OF THE SOVIET UNION ON TERRITORIAL WATERS AND FISHERIES

NOTE. The basic position of the Soviet Union with respect to the width

of the territorial sea is a claim to a 12 mile belt from low-water mark or defined lines. Although, historically, the Russian and the Soviet approach was by way of separate legislation with respect to different seas and oceans, the Soviet Union Note to the United Kingdom of 25 May 1956, reprinted *supra*, Section IV, B, states “* * * that the width of the Soviet Union’s territorial waters and the regulations governing them were defined in the Statute concerning the Security of the State Frontiers of the Union of Soviet Socialist Republics of June 15, 1927.” Extensive excerpts from this 1927 Statute, as translated by the United Nations Secretariat, may be found in *U. N. Leg. Series I*, (1951), page 116. This 1927 Statute, coupled with the 1935 Order referred to in the next paragraph, are relied on by the Soviet Union in their dispute with Sweden and Denmark over territorial water limits in the Baltic, discussed, *infra*, c.

Decree concerning the protection of fisheries and game reserves in the Arctic Ocean and the White Sea, 24 May 1921, makes a 12-mile claim for exclusive fisheries and makes extensive closings of the White Sea and various bays. *U. N. Leg. Series I*, (1951), page 116. Other legislation concerning property sunken at sea (1928); use of radio equipment on foreign vessels within territorial waters (1928), and jurisdiction in waters of the Gulf of Finland (1930), employing a 4 mile limit from defined lines, appears in *Ibid.*, pages 120–124. Order of the Council of People’s Commissars, No. 2157, for the regulation of fishing and the conservation of fisheries resources, 25 September 1935, defines the maritime coastal zone for marine fisheries as 12 sea miles in breadth, and contains extensive regulations on fishing areas and measures permitted therein. It contains also provisions for the closure of seas, gulfs, and bays. The attached Schedule lists various seas, gulfs, and bays included within the Order. The special regime for the Gulf of Finland is referred to in a note and the Schedule. *Ibid.*, pages 124–130. Extracts from some of the laws cited above, and from a publication of the Law Institute of the Soviet Academy of Sciences and Letters defending claims to the White Sea and other waters as internal, may be found in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, pages 737–739.

Regulations of 10 August 1954 Concerning the Conservation of Fishery Resources and the Regulation of Fishing in the Waters of the U.S.S.R. (approved by Order of the Council of Ministers of the U.S.S.R. of 10 August 1954) provide in part as follows:

“ARTICLE 1, PARAGRAPH 2. Marine fishery waters comprise the internal maritime waters (inland seas, gulfs, bays, and creeks of open seas) and territorial waters of the U.S.S.R. (maritime frontier zone) to a width of twelve nautical miles measured from the low-water mark (both on the mainland and on islands) or, in the case of internal waters, from their outer edge.

“ARTICLE 6. Foreign nationals and bodies corporate of foreign States may not engage in commercial fishing or the commercial catching or gathering of other aquatic animals or plants in the waters of the U.S.S.R., except as provided in international agreements concluded by the U.S.S.R.”

The text of the 1954 Regulations, quoted above, was translated by the United Nations Secretariat. The U.S.S.R. abbreviations are the Editor’s. Quotations from some of the laws cited above, various treaties, and excerpts from Soviet writers concerning territorial waters and closed seas are contained in A/CN.4/38, *supra*, especially pages 5–11.

On March 21, 1956, the Soviet Press published a Decree of the Council of Ministers making a unilateral claim to impose salmon fishing restrictions in wide areas of the Sea of Okhotsk and parts of the Bering Sea and the North Pacific Ocean. The text of this Decree, reprinted below, was furnished to the Editor by the Department of State. An article with a map of the area, and a dispatch from Tokyo saying the Japanese would not recognize the restrictions of the Decree, appear in *The New York Times*, 22 March 1956, page 14, column 3. On 14 May 1956, the Soviet Union and Japan concluded a short-term fishing pact which raised the quota of the salmon catch in the area from 55,000 to 65,000 tons. *Ibid.*, 15 May 1956, page 1, column 8. The next day, a long-term fishing pact was signed which goes into effect upon the signing of a peace treaty or the resumption of diplomatic relations. The text of this latter agreement is printed, *supra*, Section III, F, 2. For data on the subsequent signing of a peace treaty in the fall of 1956, see Note to Section III, F, 2, *supra*. The Treaty entered into force on 12 December 1956 upon the exchange of ratifications in Tokyo. *The New York Times*, 13 December 1956, page 3, columns 1 and 2.

* * * * * *

(1) SOVIET SALMON FISHING DECREE OF 21 MARCH 1956

"Existing scientific and fishing data show that the ever increasing scale of unregulated salmon fishing in the northwestern part of the Pacific Ocean, carried on without any consideration of the state of their numbers, threatens stocks of these valuable commercial species of fish with extinction. Under these conditions the very expensive measures carried out according to the policy of the Ministry of Fish Industries of the Union of Soviet Socialist Republics for the safeguarding and reproduction of salmon along the Okhotsk and Kamchatka Shores, in the rivers of which salmon come up to spawn, cannot guarantee the preservation of these stocks. With the aims of safeguarding and guaranteeing the high and stable level of the stocks of far-east salmon, the catching of which is the principal occupation of the population of the Soviet Far East and particularly of the population of the Okhotsk—Kamchatka Shore areas, the Soviet Council of Ministers decrees:

1. Until the conclusion of a suitable agreement with interested countries, zones of regulated fishing of far eastern salmon in the open sea are established temporarily in the Okhotsk Sea, and also in the western part of the Bering Sea and the waters of the Pacific Ocean contiguous to the territorial waters of the Union of Soviet Socialist Republics, lying to the west and northwest of a

conditional line passing through the following coordinates: from Cape Olyutorsk in the Bering Sea, south along the meridian to 48 degrees north latitude and 170 degrees 25 minutes east longitude, and then southwest to intersection with the boundary of the territorial waters of the Union of Soviet Socialist Republics at the island of Anuchin (Little Kurile Bank-Gryada).

In these zones salmon fishing in the period of their going to spawn (from May 15 to September 15), is limited both for Soviet organizations and citizens and for organizations and citizens of other states.

2. In the fishing season of 1956 the catch of far eastern salmon in the zones noted in point 1 of the present decree is fixed at 500 thousand centners (about 25 million units). Fishing in the noted zones can be carried out only by special permission given by the organs of fishing supervision in the Soviet Ministry of the fishing industry.

3. The supervision and control of fishing in the zones noted in point 2 of the present decree, is to be entrusted to the organs of fishing supervision.

4. The present decree in no measure involves freedom of navigation in the listed zones."

* * * * *

c. BALTIC TERRITORIAL WATER LIMITS: SOVIET DISPUTE WITH SWEDEN AND DENMARK

NOTE. The Treaty of Dorpat of 1920 between the Soviet Union and Finland placed a 4 mile limit on territorial waters in the Gulf of Finland, as did the 1930 Regulations, *supra*, b. The Baltic States were not incorporated into the Soviet Union until World War II, an incorporation which the United States does not recognize. The Soviet Union claims a 12 mile limit in the Baltic on the basis of the 1927 and 1935 laws, *supra*, b. As a result of Soviet seizures of Danish and Swedish fishing vessels allegedly within this 12 mile limit, an extensive exchange of Notes has taken place between these countries. The Danish Note of 24 July 1950 in French is reprinted in *I.C.J., Pleadings, 1951, U.K.-Norway*, III, page 626. A further Danish Note of 18 July 1951, also in French, may be found in *Ibid.*, IV, page 570. Similar Notes of 24 July 1950 in French, and of 18 July 1951 in English, from Sweden to the Soviet Union may be found in *Ibid.*, III, page 625, and IV, page 572. The official text of a subsequent Danish Note of 7 June 1952 in French is reprinted in *Scandinavian Documents, 22 Nordisk Tidsskrift for International Ret*, pages 87-88 (1952). (*Acta Scandinavica Juris Gentium*.)

Chapter VIII of *Utrikesfrågor, 1950-51*, issued by the Royal Swedish Foreign Office, Stockholm, 1952, contains a thorough discussion of the controversy. It includes statements by the Swedish Foreign Minister to the Upper and Lower Chambers of the Swedish Legislature; Press Release of June 6,

1950, summarizing the Soviet reply of May 26, 1950, to the Swedish Note of May 4, 1950; Press Release of July 25, 1950, summarizing the generally identical Notes of Sweden and Denmark of July 24, 1950; Press Release of September 4, 1950, summarizing the Soviet reply of August 31, 1950; and the texts of the Swedish Note to the Soviet Union of July 18, 1951, and the Soviet Note in reply of August 21, 1951, reprinted below.

A letter to the Editor from the Counselor of the Royal Swedish Embassy, dated 26 July 1956, states that an official Swedish translation into English of some of the volumes of *Utrikesfrågor* is expected in the near future. Chapter VIII of the 1950-51 volume was translated for the Editor by Edith Anderson, whose services were obtained through the courtesy of the Swedish Embassy. The Notes of July 18, 1951, and of August 21, 1951, as thus translated, are reproduced below. They summarize the controversy and indicate the respective legal positions of the parties. On September 29, 1954, a Treaty regarding Salvage in the Baltic Sea was signed in Moscow between Sweden and the Soviet Union. At the time of signing, the Swedish Ambassador declared that the Swedish legal attitude concerning territorial water limits in the Baltic remained unchanged. See, also, Schapiro, "Limits of Russian Territorial Waters in the Baltic", 27 *B.Y.B.* 439 (1950), for an extensive commentary on the history of the Russian claims in the Baltic. It is understood that the Federal Republic of Germany has also objected to this Soviet Baltic territorial waters claim.

* * * * *

(1) NOTE FROM THE SWEDISH EMBASSY IN MOSCOW TO THE SOVIET RUSSIAN FOREIGN MINISTRY, JULY 18, 1951

"By reason of certain seizures of Swedish vessels in the Baltic Sea by Soviet authorities, the Swedish Embassy pointed out in a note of July 24, 1950, that the Swedish Government had never recognized the right of any of the coastal states of the Baltic Sea to claim ocean territory up to 12 nautical miles in width. The Embassy also cited the fact that the extent of the territorial waters of the European states has for hundreds of years been fixed, being in the case of the Baltic coastal states 3 or, in certain cases, 4 miles, and that a legal situation has thereby been established in which the ocean beyond these territorial limits must be considered as high seas and therefore under the rules of international law can not be encroached upon. Extension of these territorial limits must accordingly, in the opinion of the Swedish Government, constitute an encroachment upon the high seas.

"In reply to these representations the Soviet Union's Foreign Ministry has stated in a note to the Swedish Embassy of August 31, 1950, that no general rules of international law exist regarding the extent of territorial waters and that the determination of the extent of territorial waters falls exclusively within the competency of the appropriate state and that the extent of the Soviet Union's

territorial waters was established by a decree of June 15, 1927, regarding the protection of the Soviet Union's national boundaries, which was made public at the time it was issued. The Soviet Union's Foreign Ministry maintains on the basis thereof that the claim that a certain extension of the Soviet Union's territorial waters has occurred is entirely unfounded and that the rights reserved by the Swedish Government as concerns the legality of any state's extension of its territorial waters beyond the historically established limits cannot refer to the decree issued in 1927. In connection therewith the Ministry rejects the claim put forth in the Embassy's note as to encroachment upon the high seas on the part of the Soviet Union.

"In reply the Swedish Government wishes to point out that the abovementioned law issued in 1927, and also the decree of September 25, 1935, regarding regulation of fisheries and protection of fish stocks referred to in the Soviet Foreign Ministry's note of May 26, 1950, could not have applied to the Gulf of Finland, where the extent of the Soviet Union's territorial waters was fixed at 4 nautical miles by the peace treaty concluded in 1920 in Dorpat between the Soviet Union and Finland nor could they have applied to the Baltic States' territorial waters in the Baltic Sea, as these states were at that time not incorporated with the Soviet Union. It has of course been known to the Swedish Government that the Soviet Union lays claim to territorial waters 12 nautical miles in width along its coasts on the Arctic Ocean and in Asia. But not until the seizures of Swedish vessels by Soviet Russian coast guard vessels during the last few years has it come to the Swedish Government's knowledge that the Soviet Union claims the right to exercise control in the Baltic Sea over a water area extending considerably beyond the territorial limits which have hitherto been applied by states bordering on the Baltic Sea. Not until receipt of the Foreign Ministry's note of May 26, 1950, was it officially brought to the Swedish Government's knowledge that the interferences of the Soviet authorities with the aforesaid Swedish vessels were based on the decree of June 15, 1927, regarding the protection of the Soviet Union's national boundaries and the decree of September 25, 1935, regarding regulation of fisheries.

"The Swedish Government maintains that the circumstances that international law does not provide definite rules regarding the extent of territorial waters in no wise implies that each state can at its own discretion make arbitrary claims in that respect. This must in the Swedish Government's opinion apply to an especially high degree in case a single one of the coastal states

within such a very limited area as the Baltic Sea, where all the coastal states have for hundreds of years been freely engaged in fishing and shipping, tries by means of an inordinate extension of its territorial waters to take away from the other coastal states a considerable part of the rights hitherto enjoyed by them. The Swedish Government considers itself therefore unable to deviate from its opinion as expressed in the Embassy's note of July 24, 1950, to the effect that the Soviet Union's claim to territorial waters to a width of 12 nautical miles in the Baltic Sea constitutes an extension of territorial waters beyond the historically established limits of the territorial waters in the area in question, and is an encroachment on the high seas. Swedish interests are thereby impaired. Other countries, including Sweden, have hitherto been able to engage in fishing without interference within the areas where the Russian authorities now seek to prevent this. In the Swedish Government's opinion, therefore, an illegitimate encroachment has been made upon time-honored rights which are based on generally accepted regulations governing the right of fishing and shipping on the high seas.

"The opinion which the Swedish Government thus expressed in its note of July 24, 1950, has been disputed by the Soviet Union in its note of August 31, 1950. There is therefore difference of opinion between the Swedish Government and the Soviet Union regarding the legal situation on this point.

"If the Soviet Union's Government finds itself unable to modify its opinion, the Swedish Government would deem it natural and constructive to dissolve these differences of opinion in the field of international law by referring them to the International Court for settlement. To be sure, there is no agreement between Sweden and the Soviet Union regarding settlement of legal differences between them through the International Court. But both Sweden and the Soviet Union are, in their capacity as members of the United Nations, in accordance with Article 93 of the Charter, ipso facto committed to the Statute of the International Court.

"The Swedish Government permits itself therefore to propose that a treaty be concluded between Sweden and the Soviet Union regarding submittal to the Court at The Hague of the question whether the Soviet Union—and consequently other Baltic Sea states also—can under international law claim territorial waters for 12 nautical miles beyond their coasts in the Baltic Sea and consequently exercise within this entire coastal zone the lofty rights which under international law are the prerogative of the coastal state within its territorial limit."

* * * * *

(2) NOTE FROM THE SOVIET RUSSIAN FOREIGN MINISTRY TO THE
SWEDISH EMBASSY IN MOSCOW, AUGUST 21, 1951

"The Soviet Union's Foreign Ministry presents its compliments to the Swedish Embassy and has the honor to state the following in reference to the Embassy's note of July 18, this year, in which it was proposed that the question of the extent of the Soviet Union's territorial waters in the Baltic Sea be submitted to the International Court for settlement.

"As is well known, the extent of the Soviet Union's territorial waters was established 24 years ago by the decree of June 15, 1927, regarding the protection of the Soviet Union's national boundaries. As already pointed out in the Ministry's note of August 31, 1950, there are no general regulations contained in international law which fix the extent of territorial waters. It is also well known that the attempt to reach an international agreement on this question at the Hague Conference in 1930 regarding the codification of international law did not lead to any result. Neither has any international custom developed in this regard; the practice followed by different states in determining the extent of their territorial waters varies greatly. However, it is indisputable that as a general principle of international law with regard to the extent of territorial waters the one theory which can be accepted is that in the absence of special treaties the determination of the extent of territorial waters falls within the competency of the appropriate state and is fixed by its laws—wherefore it follows that in different states there are different limits of territorial waters.

"The circumstance must also be taken into consideration that, according to Article 38 of the Statute of the International Court, the court is bound, when deciding differences submitted to it, to apply partly international agreements which establish rules recognized by the contending states, partly international custom in evidence of a general practice accepted as valid law, partly also general legal principles recognized by the world's civilized peoples. The Soviet Union sees no reason, therefore, for submitting to the International Court a question which falls exclusively within the competency of the Soviet Union's legislative body.

"With regard to the Swedish Government's reference to the Dorpat Treaty of 1920 between the Russian Socialist Federated Soviet Republic and Finland, the Ministry deems it necessary to explain that this reference is also unfounded, as the said treaty lost its validity by the conclusion of the Soviet-Finnish Treaty of 1940 and the signing of the peace treaty with Finland in 1947.

“Likewise unfounded is the Swedish Government’s assertion that the decree of June 15, 1927, regarding the protection of the Soviet Union’s national boundaries and the decree of the Soviet Union’s Council of People’s Commissars (now Council of Ministers) of September 25, 1935, “regarding the regulation of fisheries and protection of fish stocks” do not apply to the territorial waters of the Soviet Baltic Sea republics, for the reason that federal legislation expanded automatically, at the very moment these republics became a part of the Soviet Union, so as to apply to them.”

37. Venezuela

NOTE. The United Kingdom-Venezuela Treaty relating to the Submarine Areas of the Gulf of Paria (1942) is summarized, *supra*, Section V. By a Law of 12 July 1942, Venezuela ratified this Treaty. The Venezuelan Constitution of 11 April 1953 provided in Article 2 that: “also subject to its (Venezuela’s) authority and jurisdiction are the bed of the sea and the subsoil of the areas that constitute the continental shelf as well as any islands that may be formed or that appear in this zone. The extent of the territorial sea, the contiguous maritime zone, and the air space over which the State exercises its vigilance shall be determined by law. Neither the territory nor the zones subject to the authority and jurisdiction of Venezuela may be alienated, ceded, or leased in any manner to a foreign state or states nor to any one having, representing, or managing their rights.” The quoted translation is taken from *C.I.J.-24, (English), Handbook, Third Meeting of the Inter-American Council of Jurists*, Pan American Union, 1955, page 18.

Navigation Law, 9 August 1944, translated by the United Nations Secretariat, establishing a 3 mile limit for territorial waters and an additional 9 miles as a contiguous zone, and closing bays at their entrance, appears in *U. N. Leg. Series I* (1951), page 131.

38. Yugoslavia

NOTE. Act concerning the coastal waters of the Federal People’s Republic of Yugoslavia, 1 December 1948 (28 November 1948), translated by the United Nations Secretariat, appears in *U. N. Leg. Series I*, (1951), page 132. Another English translation is in *I. C. J., Pleadings, 1951, U. K.-Norway*, III, page 750. United Kingdom Protest Notes and Yugoslavia’s reply concerning this Act may be found in *Ibid.*, IV, pages 574–576. This Act treats the waters between the islands and the mainland as inland waters, and draws closing lines at the entrances up to 12 miles as well as base lines up to 12 miles across bays. Measured from these lines and the coastline, 6 miles is claimed as the territorial belt. Yugoslavia’s comments, defending its “system,” may be found in A/CN.4/99/Add. 1, page 85, at page 97, and A/2934, page 46, *et seq.* A/2456, page 70, contains Yugoslavia’s comments on the continental shelf question.

The General Act on Maritime Fishing, 23 January 1950, Article 4, as translated by the United Nations Secretariat, appears in *U. N. Leg. Series I*, (1951), page 307. Article 4 of the “General Law on Sea Fishing,” 26 January 1951, as printed in English translation in *I. C. J., Pleadings, 1951*,

U. K.-Norway, III, page 753, is substantially identical. Both provisions forbid foreign nationals to fish in a zone 4 miles in width outside the limit of territorial waters claimed in the 1948 Act, *supra*, unless otherwise provided by law or treaties concluded by Yugoslavia. One such treaty is the Italy-Yugoslavia Fishery Agreement of 13 April 1949, referred to, *supra*, Section IV, C, and printed in English translation in *U. N. Leg. Series I*, (1951), page 240, and in French in *I. C. J., Pleadings, 1951, U. K.-Norway*, III, page 753. Another such treaty is a new Italy-Yugoslavia Fishery Agreement concluded on 1 March 1956, which adds new fishing zones with somewhat different limits, but is otherwise similar to the 1949 Agreement.



SECTION VII

RECENT IMPORTANT MARITIME CONVENTIONS OF GENERAL INTEREST

THE HISTORY OF

THE CITY OF LONDON
FROM THE FOUNDATION
TO THE PRESENT TIME
BY
JOHN STOW

SECTION VII

RECENT IMPORTANT MARITIME CONVENTIONS OF GENERAL INTEREST

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c. Arrest Convention, Entered into Force 24 February 1956	576

A. International Load Line Convention (with Final Protocol and Annexes) Signed at London, July 5, 1930

1. NOTE. This Convention, while not recent, remains important. Furthermore, a significant number of states have become parties since World War II. The purpose of the Convention was to promote safety of life and property at sea by establishing uniform principles and rules concerning the limits of loading of ships on international voyages as defined. The Convention lays down general terms for surveying and marking, provides for certificates, defines terms and determines applicability. The details are contained in the Annexes. The Convention became effective for the United States, with a Declaration, and sixteen other states on January 1, 1933. The Convention was suspended by the United States between August 9, 1941, and January 1, 1946, by Presidential Proclamation No. 2500 of August 9, 1941, 55 Stat. 1660, 3 *CFR* (Cum. Supp.) 243. The suspension was revoked by Presidential Proclamation No. 2675 of December 21, 1945, effective January 1, 1946, 59 Stat. 890, 3 *CFR* (1945 Supp.) 44. The opinion of Attorney General Biddle with respect to the proposal to suspend may be found in 4 Op. Att. Gen. U.S. 119. It is severely criticized by Professor H. W. Briggs, "The Attorney General Invokes 'Rebus Sic Stantibus'", 36 *A.J.I.L.* 89 (1942). Information with respect to modifications of the Convention by the British Government during World War II is contained in VII *Department of State Bulletin* 859 (July-December 1942).

The text of the Convention is printed in 47 Stat. 2228; *Treaty Series* No. 858; IV *Trenwith* 5287; and *British Command Paper* No. 4199. The Modification of Annex II(6) (a) of the Convention which entered into force for all the contracting governments on August 23, 1938, may be found at 53 Stat. 1787; *Treaty Series* No. 942; and IV *Trenwith* 5348.

* * * * *

a. STATUS OF THE CONVENTION AS OF OCTOBER 25, 1956

* * *

INTERNATIONAL LOAD LINE CONVENTION (WITH FINAL PROTOCOL AND ANNEXES) SIGNED AT LONDON ON 5 JULY 1930

(Came into force on 1 January 1933)

State	Date of deposit of instrument of ratification or accession (a)	
United States of America	10 June	1931
Denmark	13 August	1931
Latvia	29 January	1932

<i>State</i>	<i>Date of deposit of instrument of ratification or accession (a)</i>	
Netherlands	9 April	1932
(extension to Netherlands Indies and Curaçao, 27 February 1933)		
Canada	1 October	1932
Finland		
France		
United Kingdom of Great Britain and Northern Ireland		
(Application to the Federation of Malaya—in respect of Malacca and Penang—on 10 April 1954)		
Italy		
New Zealand (including Western Samoa) ...		
Norway		
Portugal		
Union of Soviet Socialist Republics		
Spain		
Sweden		
Iceland	26 November	1932
Cuba	9 December	1932
Peru	30 March	1933
Hungary (Notes)	12/21 January	1933 a
Roumania	1 January	1933 a
Bulgaria	4 September	1933 a
Danzig	4 August	1933 a
Siam	11 July	1933 a
Yugoslavia	26 February	1934 a
Chile	24 May	1933
Germany	6 September	1933
Irish Free State	8 February	1934
Poland	6 September	1933
Argentina	19 October	1935 a
China	19 August	1935 a
Chosen, Taiwan, etc.	12 July	1935 a
Egypt	24 July	1936 a
Estonia	17 March	1934 a
Newfoundland	1 April	1936 a
Panama	13 July	1936 a
Australia	17 February	1936
Belgium	29 May	1935
Greece	4 December	1934
India	1 October	1934
Japan	11 June	1935
Mexico	6 June	1934
Brazil	31 December	1937 a
Burma	1 April	1937 a
Uruguay	8 February	1939 a
Union of South Africa	24 February	1947 a
Dominican Republic	28 October	1947 a

<i>State</i>	<i>Date of deposit of instrument of ratification or accession (a)</i>	
Honduras	10 June	1948 a
Liberia	25 March	1949 a
Israel	15 July	1949 a
Philippines	30 September	1949
Ecuador	28 February	1950 a
Costa Rica	1 July	1953
Nicaragua	19 February	1954 a
Switzerland	19 May	1954 a
Korea	11 June	1954 a
Venezuela	30 December	1954 a
Turkey	20 May	1955 a
Czechoslovakia	18 June	1955 a
France: Extension to French Overseas Territories	28 December	1955
(Comoro Islands, French Equatorial Africa, French Possessions in Oceania, French Somaliland, French West Africa, Madagascar and Dependencies, New Caledonia and Dependencies, Saint Pierre and Miquelon, Trust Territories of Togoland-Cameroons, and Wallis and Futuna Islands.)		

N.B. Status information obtained through the courtesy of the Treaty Section, Office of Legal Affairs, United Nations Secretariat. According to *Treaties in Force*, Publication 6427, 31 October 1956, page 194, Cambodia, Vietnam, Indonesia, and the United Kingdom for Hong Kong, Straits Settlement, and Newfoundland, have also become parties.

* * * * *

B. International Convention for the Safety of Life at Sea, 1948

1. NOTE. The Convention, with annexed Regulations, was signed at London, June 10, 1948. The Convention entered into force November 19, 1952. Ratification was advised by the United States Senate April 20, 1949; ratified by the President December 16, 1949; ratification by the United States deposited with the Government of the United Kingdom and Northern Ireland January 5, 1950; proclaimed by the President September 10, 1952. The text of the Convention and the annexed regulations is printed in 3 *UST* 3450 *et seq.* The annexed Regulations not reprinted herein are at pages 3477-3680 of the cited volume. Declaration correcting certain errors in the Regulations follow at pages 3683-3688. The same documents are also printed in *Treaties and Other International Acts Series (TIAS)* No. 2495, and in *British Command Paper* No. 8720.

* * * * *

a. TEXT OF THE CONVENTION

**INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE
AT SEA, 1948***London, 10th June, 1948*

The Governments of the Argentine Republic, the Commonwealth of Australia, Belgium, the Republic of the United States of Brazil, Canada, the Republic of Chile, the Republic of China, Denmark, Egypt, the Republic of Finland, the French Republic, Greece, the Republic of Iceland, India, Ireland, the Italian Republic, the Netherlands, New Zealand, Norway, Pakistan, the Republic of Panama, the Republic of the Philippines, the Republic of Poland, the Portuguese Republic, the Union of South Africa, Sweden, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Union of Soviet Socialist Republics and the Federative People's Republic of Yugoslavia, being desirous of promoting safety of life at sea by establishing in common agreement uniform principles and rules directed thereto:

Considering that this end may best be achieved by the conclusion of a Convention to replace the International Convention for the Safety of Life at Sea, 1929:

Have appointed their Plenipotentiaries, namely:

[List of Plenipotentiaries omitted.]

Who, having communicated their full powers, found in good and due form, have agreed as follows:—

ARTICLE I

(a) The Contracting Governments undertake to give effect to the provisions of the present Convention and of the Regulations annexed thereto, which shall be deemed to constitute an integral part of the present Convention. Every reference to the present Convention implies at the same time a reference to these Regulations.

(b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended.

ARTICLE II

The ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting

Governments, the ships registered in territories to which the present Convention is extended under Article XIII.

ARTICLE III

LAWS, REGULATIONS, REPORTS

The Contracting Governments undertake to communicate to the Intergovernmental Maritime Consultative Organisation (hereinafter called the Organisation)—

(a) the text of laws, decrees, orders and regulations which shall have been promulgated on the various matters within the scope of the present Convention;

(b) all available official reports or official summaries of reports in so far as they show the results of the provisions of the present Convention, provided always that such reports or summaries are not of a confidential nature; and

(c) a sufficient number of specimens of their Certificates issued under the provisions of the present Convention for circulation to the Contracting Governments for the information of their officers.

ARTICLE IV

CASES OF FORCE MAJEURE

(a) No ship, which is not subject to the provisions of the present Convention at the time of its departure on any voyage, shall become subject to the provisions of the present Convention on account of any deviation from its intended voyage due to stress of weather or any other cause of *force majeure*.

(b) Persons who are on board a ship by reason of *force majeure* or in consequence of the obligation laid upon the master to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to a ship of any provisions of the present Convention.

ARTICLE V

CARRIAGE OF PERSONS IN EMERGENCY

(a) For the purpose of moving persons from any territory in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention.

(b) Such permission shall not deprive other Contracting Governments of any right of control under the present Convention over such ships which come within their ports.

(c) Notice of any such permission, together with a statement

of the circumstances, shall be sent to the Organisation by the Contracting Governments granting such permission.

ARTICLE VI

SUSPENSION IN CASE OF WAR

(a) In case of war, Contracting Governments which consider that they are affected, whether as belligerents or as neutrals, may suspend the whole or any part of the Regulations annexed hereto. The suspending Government shall immediately give notice of such suspension to the Organisation.

(b) Such suspension shall not deprive other Contracting Governments of any right of control under the present Convention over the ships of the suspending Governments when such ships are within their ports.

(c) The suspending Government may at any time terminate such suspension and shall immediately give notice of such termination to the Organisation.

(d) The Organisation shall notify all Contracting Governments of any suspension or termination of suspension under this Article.

ARTICLE VII

PRIOR TREATIES AND CONVENTIONS

(a) As between the Contracting Governments the present Convention replaces and abrogates the International Convention for the Safety of Life at Sea which was signed in London on the 31st May, 1929.¹

(b) All other treaties, conventions and arrangements relating to safety of life at sea, or matters appertaining thereto, at present in force between Governments parties to the present Convention, shall continue to have full and complete effect during the terms thereof as regards:—

(i) ships to which the present Convention does not apply;

(ii) ships to which the present Convention applies, in respect of matters for which it has not expressly provided.

(c) To the extent, however, that such treaties, conventions or arrangements conflict with the provisions of the present Convention, the provisions of the present Convention shall prevail.

(d) All matters which are not expressly provided for in the present Convention remain subject to the legislation of the Contracting Governments.

¹ "Treaty Series No. 34(1932)," Cmd. 4198; U.S.T.S. No. 910, 50 Stat. at Large 1121.

ARTICLE VIII

SPECIAL RULES DRAWN UP BY AGREEMENT

When in accordance with the present Convention special rules are drawn up by agreement between all or some of the Contracting Governments, such rules shall be communicated to the Organisation for circulation to all Contracting Governments.

ARTICLE IX

AMENDMENTS

(a) (i) The present Convention may be amended by unanimous agreement between the Contracting Governments.

(ii) Upon the request of any Contracting Government a proposed amendment shall be communicated by the Organisation to all Contracting Governments for consideration and acceptance under this paragraph.

(b) (i) An amendment to the present Convention may be proposed to the Organisation at any time by any Contracting Government, and such proposal if adopted by a two-thirds majority of the Assembly of the Organisation (hereinafter called the Assembly), upon recommendation adopted by a two-thirds majority of the Maritime Safety Committee of the Organisation (hereinafter called the Maritime Safety Committee), shall be communicated by the Organisation to all Contracting Governments for their acceptance.

(ii) Any such recommendation by the Maritime Safety Committee shall be communicated by the Organisation to all Contracting Governments for their consideration at least six months before it is considered by the Assembly.

(c) (i) A conference of Governments to consider amendments to the present Convention proposed by any Contracting Government shall at any time be convened by the Organisation upon the request of one-third of the Contracting Governments.

(ii) Every amendment adopted by such conference by a two-thirds majority of the Contracting Governments shall be communicated by the Organisation to all Contracting Governments for their acceptance.

(d) Any amendment communicated to Contracting Governments for their acceptance under paragraph (b) or (c) of this Article shall come into force for all Contracting Governments, except those which before it comes into force make a declaration that they do not accept the amendment, twelve months after the date on which the amendment is accepted by two-thirds of the

Contracting Governments including two-thirds of the Governments represented on the Maritime Safety Committee.

(e) The Assembly, by a two-thirds majority vote, including two-thirds of the Governments represented on the Maritime Safety Committee, and subject to the concurrence of two-thirds of the Contracting Governments to the present Convention, or a conference convened under paragraph (c) of this Article by a two-thirds majority vote, may determine at the time of its adoption that the amendment is of such an important nature that any Contracting Government which makes a declaration under paragraph (d) of this Article and which does not accept the amendment within a period of twelve months after the amendment comes into force, shall, upon the expiry of this period, cease to be a party to the present Convention.

(f) Any amendment to the present Convention made under this Article which relates to the structure of a ship shall apply only to ships the keels of which are laid after the date on which the amendment comes into force.

(g) The Organisation shall inform all Contracting Governments of any amendments which come into force under this Article, together with the date on which such amendments shall come into force.

(h) Any acceptance or declaration under this Article shall be made by a notification in writing to the Organisation, which shall notify all Contracting Governments of the receipt of the acceptance or declaration.

ARTICLE X

SIGNATURE AND ACCEPTANCE

(a) The present Convention shall remain open for signature for one month from this day's date and shall, thereafter, remain open for acceptance. Governments of States may become parties to the Convention by:—

- (i) signature without reservation as to acceptance;
 - (ii) signature subject to acceptance followed by acceptance;
- or
- (iii) acceptance.

(b) Acceptance shall be effected by the deposit of an instrument with the Organisation, which shall inform all Governments that have already accepted the Convention of each acceptance received and of the date of its receipt.

ARTICLE XI

COMING INTO FORCE

(a) The present Convention shall come into force on the 1st January, 1951, provided that, at least 12 months before that date, not less than 15 acceptances, including 7 by countries each with not less than one million gross tons of shipping, have been deposited in accordance with Articles X and XV.

(b) Should 15 acceptances in accordance with paragraph (a) of this Article not have been deposited 12 months before the 1st January, 1951, the present Convention shall come into force 12 months after the date on which the last of such acceptances is deposited. The Organisation shall inform all Governments which have signed or accepted the present Convention of the date on which it comes into force.

(c) Acceptances deposited after the date on which the present Convention comes into force shall take effect three months after the date of their deposit.

ARTICLE XII

DENUNCIATION

(a) The present Convention may be denounced by any Contracting Government at any time after the expiry of five years from the date on which the Convention comes into force for that Government.

(b) Denunciation shall be effected by a notification in writing addressed to the Organisation which shall notify all the other Contracting Governments of any denunciation received and of the date of its receipt.

(c) A denunciation shall take effect one year, or such longer period as may be specified in the notification, after its receipt by the Organisation.

ARTICLE XIII

TERRITORIES

(a) (i) The United Nations in cases where they are the administering authority for a territory, or any Contracting Government responsible for the international relations of a territory, may at any time by notification in writing given to the Organisation declare that the present Convention shall extend to such territory.

(ii) The present Convention shall from the date of the receipt of the notification or from such other date as may be specified in the notification extend to the territory named therein.

(b) (i) The United Nations or any Contracting Government which has made a declaration under paragraph (a) of this Article, at any time after the expiry of a period of five years from the date on which the Convention has been so extended to any territory, may by a notification in writing given to the Organisation declare that the present Convention shall cease to extend to any such territory named in the notification.

(ii) The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Organisation.

(c) The Organisation shall inform all the Contracting Governments of the extension of the present Convention to any territories under paragraph (a) of this Article, and of the termination of any such extension under the provisions of paragraph (b), stating in each case the date from which the present Convention has been or will cease to be so extended.

ARTICLE XIV

REGISTRATION

As soon as the present Convention comes into force it shall be registered by the Organisation with the Secretary-General of the United Nations.

ARTICLE XV

INTERIM ARRANGEMENTS

(a) Unless and until the Organisation, in accordance with the Convention on the Intergovernmental Maritime Consultative Organisation signed at Geneva on the 6th March, 1948, takes over the duties assigned to it under the present Convention, the following provisions shall apply:—

(i) All duties which are assigned to the Organisation, other than those set forth in Article IX, shall be carried out by the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter called the Government of the United Kingdom).

(ii) Amendments to the present Convention may be proposed at any time by any Contracting Government to the Government of the United Kingdom and such proposals shall be communicated by the latter to the other Contracting Governments for their consideration and acceptance. If any such amendment is unanimously accepted by the Contracting Governments, the present Convention shall be amended accordingly.

(iii) A conference for the purpose of revising the present Convention shall be convened by the Government of the United Kingdom whenever, after the present Convention has been in force for five years, one-third of the Contracting Governments express a desire to that effect.

(iv) The present Convention shall be deposited in the archives of the Government of the United Kingdom, which shall transmit certified true copies thereof to all Signatory Governments.

(b) When the Organisation takes over the duties assigned to it under the present Convention, the Government of the United Kingdom will transmit to the Organisation any documents which have been deposited with or received by the Government of the United Kingdom under the present Convention.

In witness whereof the undersigned Plenipotentiaries have signed the present Convention.

Done in London this tenth day of June, 1948, in a single copy in English and French, each text being equally authoritative.

[Signatures omitted.] [Annexed regulations omitted.]

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b. STATUS TABLE AS OF OCTOBER 25, 1956

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1948 (WITH ANNEXED REGULATIONS) SIGNED AT LONDON ON 10 JUNE 1948

(Entered into force on 19 November 1952)

<i>State</i>	<i>Date of deposit of instrument of ratification or acceptance (a)</i>	
United Kingdom	30 September	1949
(Extension to Hong Kong on 7 April 1953; extension to Singapore on 5 August 1953; extension to Malaya on 21 October 1953)		
New Zealand	29 December	1949
United States of America	5 January	1950
Alaska, Hawaii and Puerto Rico		
France	8 February	1950
(Extension to Tunisia and Morocco on 22 April 1955; extension to Overseas Territories on 31 May 1955)		
Netherlands	18 April	1950
(Extension to Netherlands Antilles on 11 January 1955)		
Sweden	16 May	1950
Norway	12 June	1950

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1948
—CONTINUED

<i>State</i>	<i>Date of deposit of instrument of ratification or acceptance (a)</i>	
Union of South Africa	18 August	1950
Iceland	19 October	1950
Portugal	30 November	1950
Canada	1 February	1951
Pakistan	1 February	1951
Denmark	15 October	1951
Yugoslavia	13 November	1951
Italy	19 November	1951
(Extension to Somaliland on 6 July 1953)		
Belgium	5 December	1951
Israel	2 July	1952
Japan	23 July	1952
Philippines	2 October	1952
India	19 November	1952
Spain	26 December	1952
Spanish Morocco, Spanish Colonies		
Liberia	13 January	1953
Chile	5 June	1953
Finland	13 August	1953
Ireland	19 August	1953
Viet Nam	12 September	1953
Panama	8 January	1954
Greece	21 January	1954
Nicaragua	19 February	1954 a
Cambodia	2 March	1954 a
Union of Soviet Socialist Republics	10 May	1954 a
Switzerland	19 May	1954 a
Haiti	26 May	1954 a
Egypt	11 June	1954 a
Poland	11 June	1954 a
Federal Republic of Germany	19 August	1954 a
(valid for Berlin)		
Cuba	26 August	1954 a
Romania	30 September	1954 a
Monaco	12 January	1955 a
Dominican Republic	29 March	1955 a
Brazil	1 January	1956
Venezuela	8 February	1956 a
Argentina	31 July	1956
Hungary	15 August	1956 a

N.B. Status information obtained through the courtesy of the Treaty Section, Office of Legal Affairs, United Nations Secretariat. As of August 1957, Bulgaria, Turkey, and Czechoslovakia have also deposited acceptances.

2. International Regulations for Preventing Collisions at Sea, 1948

NOTE. These Regulations entered into force on January 1, 1954. The text is not reprinted here. The Regulations are printed in Coast Guard-169 as of March 1, 1955. The Regulations as originally adopted may be found in 4 *UST* 2956; *TIAS* No. 2899; and *British Command Paper* No. 9050.

* * * * *

a. PARTIES TO THE REGULATIONS AS OF OCTOBER 25, 1956

Argentina	Japan
Australia	Liberia
Belgium	Mexico
Brazil	Netherlands
Bulgaria	New Zealand
Burma	Nicaragua
Canada	Norway
Chile	Pakistan
Colombia	Panama
Czechoslovakia	Peru
Denmark	Philippines
Dominican Republic	Poland
Ecuador	Portugal
Egypt	Rumania
Finland	Spain
France	Sweden
Federal Republic of Germany	Thailand
Greece	Turkey
Haiti	Union of South Africa
Hungary	Union of Soviet Socialist Republics
Iceland	United Kingdom
India	United States
Iraq	Uruguay
Ireland	Venezuela
Israel	Viet-Nam
Italy	Yugoslavia

N. B. Status information obtained through the courtesy of the Treaty Section, Office of Legal Affairs, United Nations Secretariat. As of August 1957, Cuba had also become a party to the Regulations.

C. United Nations Maritime Consultative Organization, 1948 (Not in Force, 1956)

1. NOTE. The Convention for the Establishment of the Inter-governmental Maritime Consultative Organization is not in force as of 1956. It was concluded at Geneva 6 March 1948. The Final Act and Related Documents are contained in United Nations Publication 1948. VIII. 2. The Agreement for Provisional Maritime Consultative Council, adopted October 30, 1946, entered into force for the United States April 23, 1947, 61 Stat. (4) 3796; *TIAS* No. 1724. Fourteen other states were parties as of October 31, 1956. (*Department of State Publication* No. 6427, p. 194.) The following text of the 1948 Convention is taken from *British Command Paper* No. 7412.

* * * * *

a. TEXT OF THE CONVENTION**CONVENTION FOR THE ESTABLISHMENT OF THE INTER-
GOVERNMENTAL MARITIME CONSULTATIVE ORGANISA-
TION (1948)**

The States parties to the present Convention hereby establish the Inter-governmental Maritime Consultative Organisation (hereinafter referred to as "the Organisation").

Part I.—Purposes of the Organisation**ARTICLE 1**

The purposes of the Organisation are:—

(a) to provide machinery for co-operation among Governments in the field of Governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation;

(b) to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in inter-national trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade;

(c) to provide for the consideration by the Organisation of matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;

(d) to provide for the consideration by the Organisation of any matters concerning shipping that may be referred to it by any organ or specialised agency of the United Nations;

(e) to provide for the exchange of information among Governments on matters under consideration by the Organisation.

Part II.—Functions**ARTICLE 2**

The functions of the Organisation shall be consultative and advisory.

ARTICLE 3

In order to achieve the purposes set out in Part I, the functions of the Organisation shall be:—

(a) subject to the provisions of Article 4, to consider and make recommendations upon matters arising under Article 1 (a), (b) and (c) that may be remitted to it by members, by any organ or specialised agency of the United Nations or by any other inter-governmental organisation or upon matters referred to it under Article 1 (d) ;

(b) to provide for the drafting of conventions, agreements, or other suitable instruments, and to recommend these to Governments and to inter-governmental organisations, and to convene such conferences as may be necessary;

(c) to provide machinery for consultation among members and the exchange of information among Governments.

ARTICLE 4

In those matters which appear to the Organisation capable of settlement through the normal processes of international shipping business the Organisation shall so recommend. When, in the opinion of the Organisation, any matter concerning unfair restrictive practices by shipping concerns is incapable of settlement through the normal processes of international shipping business, or has in fact so proved, and provided it shall first have been the subject of direct negotiations between the Members concerned, the Organisation shall, at the request of one of those members, consider the matter.

Part III.—Membership

ARTICLE 5

Membership in the Organisation shall be open to all States, subject to the provisions of Part III.

ARTICLE 6

Members of the United Nations may become members of the Organisation by becoming parties to the Convention in accordance with the provisions of Article 57.

ARTICLE 7

States not members of the United Nations which have been invited to send representatives to the United Nations Maritime Conference convened in Geneva on 19th February, 1948, may be-

come members by becoming parties to the Convention in accordance with the provisions of Article 57.

ARTICLE 8

Any State not entitled to become a member under Article 6 or 7 may apply through the Secretary-General of the Organisation to become a member and shall be admitted as a member upon its becoming a party to the Convention in accordance with the provisions of Article 57, provided that, upon the recommendation of the Council, its application has been approved by two-thirds of the members other than associate-members.

ARTICLE 9

Any territory or group of territories to which the Convention has been made applicable under Article 58, by the member having responsibility for its international relations or by the United Nations, may become an associate-member of the Organisation by notification in writing given by such member or by the United Nations, as the case may be, to the Secretary-General of the United Nations.

ARTICLE 10

An associate-member shall have the rights and obligations of a member under the Convention except that it shall not have the right to vote in the Assembly or be eligible for membership on the Council or on the Maritime Safety Committee and subject to this the word "member" in the Convention shall be deemed to include associate-member unless the context otherwise requires.

ARTICLE 11

No State or territory may become or remain a member of the Organisation contrary to a resolution of the General Assembly of the United Nations.

Part IV.—Organs

ARTICLE 12

The Organisation shall consist of an Assembly, a Council, a Maritime Safety Committee, and such subsidiary organs as the Organisation may at any time consider necessary; and a Secretariat.

Part V.—The Assembly

ARTICLE 13

The Assembly shall consist of all the members.

ARTICLE 14

Regular sessions of the Assembly shall take place once every 2 years. Extraordinary sessions shall be convened after a notice of 60 days whenever one-third of the members give notice to the Secretary-General that they desire a session to be arranged, or at any time if deemed necessary by the Council, after a notice of 60 days.

ARTICLE 15

A majority of the members other than associate-members shall constitute a quorum for the meetings of the Assembly.

ARTICLE 16

The functions of the Assembly shall be:—

(a) to elect at each regular session from among its members, other than associate-members, its President and 2 Vice-Presidents who shall hold office until the next regular session;

(b) to determine its own rules of procedure except as otherwise provided in the Convention;

(c) to establish any temporary or, upon recommendation of the Council, permanent subsidiary bodies it may consider to be necessary;

(d) to elect the members to be represented on the Council, as provided in Article 17, and on the Maritime Safety Committee as provided in Article 28;

(e) to receive and consider the reports of the Council, and to decide upon any question referred to it by the Council;

(f) to vote the budget and determine the financial arrangements of the Organisation, in accordance with Part IX;

(g) to review the expenditures and approve the accounts of the Organisation;

(h) to perform the functions of the Organisation, provided that in matters relating to Article 3 (a) and (b), the Assembly shall refer such matters to the Council for formulation by it of any recommendations or instruments thereon; provided further that any recommendations or instruments submitted to the Assembly by the Council and not accepted by the Assembly shall be referred back to the Council for further consideration with such observations as the Assembly may make;

(i) to recommend to members for adoption regulations concerning maritime safety, or amendments to such regulations, which have been referred to it by the Maritime Safety Committee through the Council;

(j) to refer to the Council for consideration or decision any

matters within the scope of the Organisation, except that the function of making recommendations under paragraph (i) of this Article shall not be delegated.

Part VI.—The Council

ARTICLE 17

The Council shall consist of 16 members and shall be composed as follows:—

(a) six shall be Governments of the nations with the largest interest in providing international shipping services;

(b) six shall be Governments of other nations with the largest interest in international sea-borne trade;

(c) two shall be elected by the Assembly from among the Governments of nations having a substantial interest in providing international shipping services; and

(d) two shall be elected by the Assembly from among the Governments of nations having a substantial interest in international sea-borne trade.

In accordance with the principles set forth in this article the first Council shall be constituted as provided in Appendix I to the present Convention.

ARTICLE 18

Except as provided in Appendix I to the present Convention, the Council shall determine, for the purpose of Article 17 (a), the members, Governments of nations with the largest interest in providing international shipping services, and shall also determine, for the purpose of Article 17 (c), the members, Governments of nations having a substantial interest in providing such services. Such determinations shall be made by a majority vote of the Council, including the concurring votes of a majority of the members represented on the Council under Article 17 (a) and (c). The Council shall further determine, for the purpose of Article 17 (b), the members, Governments of nations with the largest interest in international sea-borne trade. Each Council shall make these determinations at a reasonable time before each regular session of the Assembly.

ARTICLE 19

Members represented on the Council in accordance with Article 17 shall hold office until the end of the next regular session of the Assembly. Members shall be eligible for re-election.

ARTICLE 20

(a) The Council shall elect its Chairman and adopt its own rules of procedure except as otherwise provided in the Convention.

(b) Twelve members of the Council shall constitute a quorum.

(c) The Council shall meet upon one month's notice as often as may be necessary for the efficient discharge of its duties upon the summons of its Chairman or upon request by not less than 4 of its members. It shall meet at such places as may be convenient.

ARTICLE 21

The Council shall invite any member to participate, without vote, in its deliberations on any matter of particular concern to that member.

ARTICLE 22

(a) The Council shall receive the recommendations and reports of the Maritime Safety Committee and shall transmit them to the Assembly and, when the Assembly is not in session, to the members for information, together with the comments and recommendations of the Council.

(b) Matters within the scope of Article 29 shall be considered by the Council only after obtaining the views of the Maritime Safety Committee thereon.

ARTICLE 23

The Council, with the approval of the Assembly, shall appoint the Secretary-General. The Council shall also make provision for the appointment of such other personnel as may be necessary, and determine the terms and conditions of service of the Secretary-General and other personnel, which terms and conditions shall conform as far as possible with those of the United Nations and its specialised agencies.

ARTICLE 24

The Council shall make a report to the Assembly at each regular session on the work of the Organisation since the previous regular session of the Assembly.

ARTICLE 25

The Council shall submit to the Assembly the budget estimates and the financial statements of the Organisation, together with its comments and recommendations.

ARTICLE 26

The Council may enter into agreements or arrangements covering the relationship of the Organisation with other organisations, as provided for in Part XII. Such agreements or arrangements shall be subject to approval by the Assembly.

ARTICLE 27

Between sessions of the Assembly, the Council shall perform all the functions of the Organisation, except the function of making recommendations under Article 16 (i).

Part VII.—Maritime Safety Committee

ARTICLE 28

(a) The Maritime Safety Committee shall consist of 14 members elected by the Assembly from the members, Governments of those nations having an important interest in maritime safety, of which not less than 8 shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of members, Governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas.

(b) Members shall be elected for a term of 4 years and shall be eligible for re-election.

ARTICLE 29

(a) The Maritime Safety Committee shall have the duty of considering any matter within the scope of the Organisation and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

(b) The Maritime Safety Committee shall provide machinery for performing any duties assigned to it by the Convention, or by the Assembly, or any duty within the scope of this article which may be assigned to it by any other inter-governmental instrument.

(c) Having regard to the provisions of Part XII, the Maritime Safety Committee shall have the duty of maintaining such close

relationship with other inter-governmental bodies concerned with transport and communications as may further the object of the Organisation in promoting maritime safety and facilitate the co-ordination of activities in the fields of shipping, aviation, telecommunications and meteorology with respect to safety and rescue.

ARTICLE 30

The Maritime Safety Committee, through the Council, shall:—

(a) submit to the Assembly at its regular sessions proposals made by members for safety regulations or for amendments to existing safety regulations, together with its comments or recommendations thereon;

(b) report to the Assembly on the work of the Maritime Safety Committee since the previous regular session of the Assembly.

ARTICLE 31

The Maritime Safety Committee shall meet once a year and at other times upon request of any 5 of its members. It shall elect its officers once a year and shall adopt its own rules of procedure. A majority of its members shall constitute a quorum.

ARTICLE 32

The Maritime Safety Committee shall invite any member to participate, without vote, in its deliberations on any matter of particular concern to that member.

Part VIII.—The Secretariat

ARTICLE 33

The Secretariat shall comprise the Secretary-General, a Secretary of the Maritime Committee and such staff as the Organisation may require. The Secretary-General shall be the chief administrative officer of the Organisation, and shall, subject to the provisions of Article 23, appoint the abovementioned personnel.

ARTICLE 34

The Secretariat shall maintain all such records as may be necessary for the efficient discharge of the functions of the Organisation and shall prepare, collect, and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly, the Council, the Maritime Safety Committee, and such subsidiary organs as the Organisation may establish.

ARTICLE 35

The Secretary-General shall prepare and submit to the Council the financial statements for each year and the budget estimates on a biennial basis, with the estimates for each year shown separately.

ARTICLE 36

The Secretary-General shall keep members informed with respect to the activities of the Organisation. Each member may appoint one or more representatives for the purpose of communication with the Secretary-General.

ARTICLE 37

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials. Each member on its part undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

ARTICLE 38

The Secretary-General shall perform such other tasks as may be assigned to him by the Convention, the Assembly, the Council and the Maritime Safety Committee.

Part IX.—Finances

ARTICLE 39

Each member shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on the Council, the Maritime Safety Committee, other committees and subsidiary bodies.

ARTICLE 40

The Council shall consider the financial statements and budget estimates prepared by the Secretary-General and submit them to the Assembly with its comments and recommendations.

ARTICLE 41

(a) Subject to any agreement between the Organisation and the United Nations, the Assembly shall review and approve the budget estimates.

(b) The Assembly shall apportion the expenses among the members in accordance with a scale to be fixed by it after consideration of the proposals of the Council thereon.

ARTICLE 42

Any member which fails to discharge its financial obligation to the Organisation within one year from the date on which it is due shall have no vote in the Assembly, the Council, or the Maritime Safety Committee unless the Assembly, at its discretion, waives this provision.

Part X.—Voting.

ARTICLE 43

The following provisions shall apply to voting in the Assembly, the Council and the Maritime Safety Committee:—

(a) Each member shall have one vote.

(b) Except as otherwise provided in the Convention or in any international agreement which confers functions on the Assembly, the Council, or the Maritime Safety Committee, decisions of these organs shall be by a majority vote of the members present and voting and, for decisions where a two-thirds majority vote is required, by a two-thirds majority vote of those present.

(c) For the purpose of the Convention, the phrase “members present and voting” means “members present and casting an affirmative or negative vote.” Members which abstain from voting shall be considered as not voting.

Part XI.—Headquarters of the Organisation

ARTICLE 44

(a) The headquarters of the Organisation shall be established in London.

(b) The Assembly may by a two-thirds majority vote change the site of the headquarters if necessary.

(c) The Assembly may hold sessions in any place other than the headquarters if the Council deems it necessary.

Part XII.—Relationship with the United Nations and other Organisations

ARTICLE 45

The Organisation shall be brought into relationship with the United Nations in accordance with Article 57 of the Charter

of the United Nations as the specialised agency in the field of shipping. This relationship shall be effected through an agreement with the United Nations under Article 63 of the Charter of the United Nations, which agreement shall be concluded as provided in Article 26.

ARTICLE 46

The Organisation shall co-operate with any specialised agency of the United Nations in matters which may be the common concern of the Organisation and of such specialised agency, and shall consider such matters and act with respect to them in accord with such specialised agency.

ARTICLE 47

The Organisation may, on matters within its scope, co-operate with other inter-governmental organisations which are not specialised agencies of the United Nations, but whose interests and activities are related to the purposes of the Organisation.

ARTICLE 48

The Organisation may, on matters within its scope, make suitable arrangements for consultation and co-operation with non-governmental international organisations.

ARTICLE 49

Subject to approval by a two-thirds majority vote of the Assembly, the Organisation may take over from any other international organisations, governmental or non-governmental, such functions, resources and obligations within the scope of the Organisation as may be transferred to the Organisation by international agreements or by mutually acceptable arrangements entered into between competent authorities of the respective organisations. Similarly, the Organisation may take over any administrative functions which are within its scope and which have been entrusted to a Government under the terms of any international instrument.

Part XIII.—Legal Capacity, Privileges and Immunities

ARTICLE 50

The Legal capacity, privileges and immunities to be accorded to, or in connexion with, the Organisation shall be derived from and governed by the General Convention on the Privileges and Immunities of the Specialised Agencies approved by the General Assembly of the United Nations on 21st November, 1947, subject to

such modifications as may be set forth in the final (or revised) text of the Annex approved by the Organisation in accordance with Sections 36 and 38 of the said General Convention.

ARTICLE 51

Pending its accession to the said General Convention in respect of the Organisation, each member undertakes to apply the provisions of Appendix II to the present Convention.

Part XIV.—Amendments

ARTICLE 52

Texts of proposed amendments to the Convention shall be communicated by the Secretary-General to members at least 6 months in advance of their consideration by the Assembly. Amendments shall be adopted by a two-thirds majority vote of the Assembly, including the concurring votes of a majority of the members represented on the Council. Twelve months after its acceptance by two-thirds of the members of the Organisation, other than associate-members, each amendment shall come into force for all members except those which, before it comes into force, make a declaration that they do not accept the amendment. The Assembly may by a two-thirds majority vote determine at the time of its adoption that an amendment is of such a nature that any member which has made such a declaration and which does not accept the amendment within a period of 12 months after the amendment comes into force shall, upon the expiration of this period, cease to be a party to the Convention.

ARTICLE 53

Any amendment adopted under Article 52 shall be deposited with the Secretary-General of the United Nations, who will immediately forward a copy of the amendment to all members.

ARTICLE 54

A declaration or acceptance under Article 52 shall be made by the communication of an instrument to the Secretary-General for deposit with the Secretary-General of the United Nations. The Secretary-General will notify members of the receipt of any such instrument and of the date when the amendment enters into force.

Part XV.—Interpretation

ARTICLE 55

Any question or dispute concerning the interpretation or appli-

cation of the Convention shall be referred for settlement to the Assembly, or shall be settled in such other manner as the parties to the dispute agree. Nothing in this article shall preclude the Council or the Maritime Safety Committee from settling any such question or dispute that may arise during the exercise of their functions.

ARTICLE 56

Any legal question which cannot be settled as provided in Article 55 shall be referred by the Organisation to the International Court of Justice for an advisory opinion in accordance with Article 96 of the Charter of the United Nations.

Part XVI.—Miscellaneous Provisions

ARTICLE 57

SIGNATURE AND ACCEPTANCE

Subject to the provisions of Part III the present Convention shall remain open for signature or acceptance and States may become parties to the Convention by:—

- (a) signature without reservation as to acceptance;
 - (b) signature subject to acceptance followed by acceptance;
- or
- (c) acceptance.

Acceptance shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

ARTICLE 58

TERRITORIES

(a) Members may make a declaration at any time that their participation in the Convention includes all or a group or a single one of the territories for whose international relations they are responsible.

(b) The Convention does not apply to territories for whose international relations members are responsible unless a declaration to that effect has been made on their behalf under the provisions of paragraph (a) of this article.

(c) A declaration made under paragraph (a) of this article shall be communicated to the Secretary-General of the United Nations and a copy of it will be forwarded by him to all States invited to the United Nations Maritime Conference and to such other States as may have become members.

(d) In cases where under a trusteeship agreement the United Nations is the administering authority, the United Nations may

accept the Convention on behalf of one, several, or all of the trust territories in accordance with the procedure set forth in Article 57.

ARTICLE 59 WITHDRAWAL

(a) Any member may withdraw from the Organisation by written notification given to the Secretary-General of the United Nations, who will immediately inform the other members and the Secretary-General of the Organisation of such notification. Notification of withdrawal may be given at any time after the expiration of 12 months from the date on which the Convention has come into force. The withdrawal shall take effect upon the expiration of 12 months from the date on which such written notification is received by the Secretary-General of the United Nations.

(b) The application of the Convention to a territory or group of territories under Article 58 may at any time be terminated by written notification given to the Secretary-General of the United Nations by the member responsible for its international relations or, in the case of a trust territory of which the United Nations is the administering authority, by the United Nations. The Secretary-General of the United Nations will immediately inform all members and the Secretary-General of the Organisation of such notification. The notification shall take effect upon the expiration of 12 months from the date on which it is received by the Secretary-General of the United Nations.

Part XVII.—Entry into Force

ARTICLE 60

The present Convention shall enter into force on the date when 21 States, of which 7 shall each have a total tonnage of not less than 1 million gross tons of shipping, have become parties to the Convention in accordance with Article 57.

ARTICLE 61

The Secretary-General of the United Nations will inform all States invited to the United Nations Maritime Conference and such other States as may have become members, of the date when each State becomes party to the Convention, and also of the date on which the Convention enters into force.

ARTICLE 62

The present Convention, of which the English, French and

Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who will transmit certified copies thereof to each of the States invited to the United Nations Maritime Conference and to such other States as may have become members.

ARTICLE 63

The United Nations is authorised to effect registration of the Convention as soon as it comes into force.

IN WITNESS WHEREOF the undersigned being duly authorised by their respective Governments for that purpose have signed the present Convention.

Done at Geneva this 6th day of March, 1948.

[Signatures omitted.]

APPENDIX I

(Referred to in Article 17)

Composition of the First Council

In accordance with the principles set forth in Article 17 the first Council shall be constituted as follows:—

(a) The 6 members under Article 17 (a) being—

Greece.	Sweden.
Netherlands.	United Kingdom.
Norway.	United States.

(b) The 6 members under Article 17 (b) being—

Argentina.	Canada.
Australia.	France.
Belgium.	India.

(c) Two members to be elected by the Assembly under Article 17 (c) from a panel nominated by the 6 members named in paragraph (a) of this Appendix.

(d) Two members elected by the Assembly under Article 17 (d) from among the members having a substantial interest in international sea-borne trade.

APPENDIX II

(Referred to in Article 51)

Legal Capacity, Privileges and Immunities

The following provisions on legal capacity, privileges and immunities shall be applied by members to, or in connexion with, the

Organisation pending their accession to the General Convention on Privileges and Immunities of Specialised Agencies in respect of the Organisation:

SECTION 1

The Organisation shall enjoy in the territory of each of its members such legal capacity as is necessary for the fulfilment of its purposes and the exercise of its functions.

SECTION 2

(a) The Organisation shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes and the exercise of its functions.

(b) Representatives of members, including alternates and advisers and officials and employees of the Organisation, shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organisation.

SECTION 3

In applying the provisions of Sections 1 and 2 of this Appendix, the members shall take into account as far as possible the standard clauses of the General Convention on the Privileges and Immunities of the Specialised Agencies.

* * * * *

b. STATUS OF THE CONVENTION AS OF OCTOBER 25, 1956 (NOT IN FORCE)

* * *

CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANISATION, 6 MARCH 1948

* * *

<i>State</i>	<i>Signature subject to approval</i>	<i>Acceptance</i>
Argentina	6 March 1948	18 June 1953
Australia	6 March 1948	13 February 1952
Belgium	6 March 1948	9 August 1951

The ratification is valid only for the metropolitan territories; the territories of the Belgian Congo and the Trust Territories of Ruanda-Urundi are expressly excluded.

Burma
Canada

6 July 1951
15 October 1948

**CONVENTION ON THE INTER-GOVERNMENTAL MARITIME
CONSULTATIVE ORGANISATION, 6 MARCH 1948—CONTINUED**

<i>State</i>	<i>Signature subject to approval</i>	<i>Acceptance</i>
Chile	6 March 1948	
Colombia	6 March 1948	
Dominican Republic		25 August 1953
Ecuador		12 July 1956
(With declaration)		
Egypt	6 March 1948	5 April 1954
Finland	6 March 1948	
France	6 March 1948	9 April 1952
Greece	6 March 1948	6 December 1950
	(Withdrawn 26 March 1956)	
Haiti		23 June 1953
Honduras	13 April 1954	23 August 1954
India	6 March 1948	
Iran	10 June 1954	
Ireland	6 March 1948	26 February 1951
Israel		24 April 1952
Italy	6 March 1948	
Lebanon	6 March 1948	
Liberia	9 March 1954	
Mexico		21 September 1954
(With a reservation)		
Netherlands	6 March 1948	31 March 1949
By a notification received on 3 October 1949, notice was given that the participation of the Netherlands in this Convention includes Indonesia, Surinam and the Netherlands West Indies.		
By a further notification received on 12 July 1951, notice was given that the participation of the Netherlands in this Convention, from 27 December 1949, no longer includes the territories under the jurisdiction of the Republic of Indonesia but includes Surinam, the Netherlands Antilles (formerly the Netherlands West Indies) and Netherlands New Guinea.		
Poland	6 March 1948	
Portugal	6 March 1948	
Switzerland	6 March 1948	20 July 1955
(With a reservation)		

**CONVENTION ON THE INTER-GOVERNMENTAL MARITIME
CONSULTATIVE ORGANISATION, 6 MARCH 1948—CONTINUED**

<i>State</i>	<i>Signature subject to approval</i>	<i>Acceptance</i>
Turkey	6 March 1948	
United Kingdom of Great Britain and Northern Ireland	6 March 1948	14 February 1949
United States of America (With a reservation)	6 March 1948	17 August 1950

N. B. Status information obtained through the courtesy of the Treaty Section, Office of Legal Affairs, United Nations Secretariat.

**D. The International Convention for the Prevention of
Pollution of the Sea by Oil, 1954 (Not in Force, 1956)**

1. NOTE. This Convention was concluded at the International Conference on Pollution of the Sea by Oil, London, May 12, 1954. The Final Act, including various Resolutions adopted, and the text of the Convention, are printed in *British Command Paper* No. 9197. There is a Note giving the history of earlier draft conventions on the same subject which never came into force in Naval War College, *International Law Documents, 1948-49* (1950), at page 180. The texts of various United States laws still in force on the subject as of 2 January 1956 are printed in *Ibid.*, pages 180-182. The text of the Convention and Annex A thereto which follow are from *Cmd. 9197*.

* * * * *

a. TEXT OF THE CONVENTION AND ANNEX A ON PROHIBITED ZONES

**“THE INTERNATIONAL CONVENTION FOR THE PREVENTION
OF POLLUTION OF THE SEA BY OIL, 1954**

London, May 12, 1954

The Governments represented at the International Conference on Pollution of the Sea by Oil held in London from 26th April, 1954, to 12th May, 1954,

Desiring to take action by common agreement to prevent pollution of the sea by oil discharged from ships, and considering that this end may best be achieved by the conclusion of a Convention,

Have accordingly appointed the undersigned plenipotentiaries, who, having communicated their full powers, found in good and due form, have agreed as follows:—

ARTICLE I

(1) For the purposes of the present Convention, the following expressions shall (unless the context otherwise requires) have

the meanings hereby respectively assigned to them, that is to say:—

‘The Bureau’ has the meaning assigned to it by Article XXI;

‘Discharge’ in relation to oil or to an oily mixture means any discharge or escape howsoever caused;

‘Heavy diesel oil’ means marine diesel oil, other than those distillates of which more than 50 per cent. by volume distils at a temperature not exceeding 340°C. when tested by A.S.T.M. Standard Method D.158/53;

‘Mile’ means a nautical mile of 6080 feet or 1852 metres;

‘Oil’ means crude oil, fuel oil, heavy diesel oil and lubricating oil, and ‘oily’ shall be construed accordingly.

(2) For the purposes of the present Convention the territories of a Contracting Government mean the territory of the country of which it is the Government and any other territory for the international relations of which the Government is responsible and to which the Convention shall have been extended under Article XVIII.

ARTICLE II

The present Convention shall apply to sea-going ships, registered in any of the territories of a Contracting Government, except

- (i) ships for the time being used as naval auxiliaries;
- (ii) ships of under 500 tons gross tonnage;
- (iii) ships for the time being engaged in the whaling industry;
- (iv) ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the Lachine Canal at Montreal in the Province of Quebec, Canada.

ARTICLE III

(1) Subject to the provisions of Articles IV and V, the discharge from any tanker, being a ship to which the Convention applies, within any of the prohibited zones referred to in Annex A to the Convention in relation to tankers of—

- (a) oil;
- (b) any oily mixture the oil in which fouds the surface of the sea, shall be prohibited.

For the purposes of this paragraph the oil in an oily mixture of less than 100 parts of oil in 1,000,000 parts of the mixture shall not be deemed to foul the surface of the sea.

(2) Subject to the provisions of Articles IV and V, any dis-

charge into the sea from a ship, being a ship to which the Convention applies and not being a tanker, of oily ballast water or tank washings shall be made as far as practicable from land. As from a date three years after the date on which the Convention comes into force, paragraph (1) of this Article shall apply to ships other than tankers as it applies to tankers, except that:—

(a) the prohibited zones in relation to ships other than tankers shall be those referred to as such in Annex A to the Convention; and

(b) the discharge of oil or of an oily mixture from such a ship shall not be prohibited when the ship is proceeding to a port not provided with such reception facilities as are referred to in Article VIII.

(3) Any contravention of paragraphs (1) and (2) of this Article shall be an offence punishable under the laws of the territory in which the ship is registered.

ARTICLE IV

(1) Article III shall not apply to:—

(a) the discharge of oil or of an oily mixture from a ship for the purpose of securing the safety of the ship, preventing damage to the ship or cargo, or saving life at sea; or

(b) the escape of oil, or of an oily mixture, resulting from damage to the ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimising the escape.

(c) the discharge of sediment:—

(i) which cannot be pumped from the cargo tanks of tankers by reason of its solidity; or

(ii) which is residue arising from the purification or clarification of oil fuel or lubricating oil,

provided that such discharge is made as far from land as is practicable.

(2) In the event of such discharge or escape as is referred to in this Article a statement shall be made in the oil record book required by Article IX of the circumstances of and reason for the discharge.

ARTICLE V

Article III shall not apply to the discharge from the bilges of a ship:—

(a) of any oily mixture during the period of twelve months following the date on which the Convention comes into force in

respect of the territory in which the ship is registered;

(b) after the expiration of such period, of an oily mixture containing no oil other than lubricating oil.

ARTICLE VI

The penalties which may be imposed in pursuance of Article III under the law of any of the territories of a Contracting Government in respect of the unlawful discharge from a ship of oil or of an oily mixture into waters outside the territorial waters of that territory shall not be less than the penalties which may be imposed under the law of that territory in respect of the unlawful discharge of oil or of an oily mixture from a ship into such territorial waters.

ARTICLE VII

As from a date twelve months after the present Convention comes into force in respect of any of the territories of a Contracting Government all ships registered in that territory shall be required to be so fitted as to prevent the escape of fuel oil or heavy diesel oil into bilges the contents of which are discharged into the sea without being passed through an oily-water separator.

ARTICLE VIII

As from a date three years after the present Convention comes into force in respect of any of the territories of a Contracting Government, that Government shall ensure the provision in each main port in that territory of facilities adequate for the reception, without causing undue delay to ships, of such residues from oily ballast water and tank washings as would remain for disposal by ships, other than tankers, using the port, if the water had been separated by the use of an oily-water separator, a settling tank or otherwise. Each Contracting Government shall from time to time determine which ports are the main ports in its territories for the purposes of this Article, and shall notify the Bureau in writing accordingly indicating whether adequate reception facilities have been installed.

ARTICLE IX

(1) There shall be carried in every ship to which the Convention applies an oil record book (whether as part of the ship's official log-book or otherwise) in the form specified in Annex B to the present Convention. The appropriate entries shall be made in that book, and each page of the book, including any statement under paragraph (2) of Article IV, shall be signed by the officer

or officers in charge of the operations concerned and by the master of the ship. The written entries in the oil record book shall be in an official language of the territory in which the ship is registered, or in English or French.

(2) The competent authorities of any of the territories of a Contracting Government may inspect on board any such ship while within a port in that territory the oil record book required to be carried in the ship in compliance with the provisions of the Convention, and may make a true copy of any entry in that book and may require the master of the ship to certify that the copy is a true copy of such entry. Any copy so made which purports to have been certified by the master of the ship as a true copy of an entry in the ship's oil record book shall be made admissible in any judicial proceedings as evidence of the facts stated in the entry. Any action by the competent authorities under this paragraph shall be taken as expeditiously as possible and the ship shall not be delayed.

ARTICLE X

(1) Any Contracting Government may furnish to the Contracting Government in the territory of which a ship is registered particulars in writing of evidence that any provision of the Convention has been contravened in respect of that ship, wheresoever the alleged contravention may have taken place. If it is practicable to do so, the competent authorities of the former Government shall notify the master of the ship of the alleged contravention.

(2) Upon receiving such particulars the latter Government shall investigate the matter, and may request the former Government to furnish further or better particulars of the alleged contravention. If the Government in the territory of which the ship is registered is satisfied that sufficient evidence is available in the form required by law to enable proceedings against the owner or master of the ship to be taken in respect of the alleged contravention, it shall cause such proceedings to be taken as soon as possible, and shall inform the other Contracting Government and the Bureau of the result of such proceedings.

ARTICLE XI

Nothing in the present Convention shall be construed as derogating from the powers of any Contracting Government to take measures within its jurisdiction in respect of any matter to which the Convention relates or as extending the jurisdiction of any Contracting Government.

ARTICLE XII

Each Contracting Government shall send to the Bureau and to the appropriate organ of the United Nations:—

(a) the text of laws, decrees, orders and regulations in force in its territories which give effect to the present Convention;

(b) all official reports or summaries of official reports in so far as they show the results of the application of the provisions of the Convention, provided always that such reports or summaries are not, in the opinion of that Government, of a confidential nature.

ARTICLE XIII

Any dispute between Contracting Governments relating to the interpretation or application of the present Convention which cannot be settled by negotiation shall be referred at the request of either party to the International Court of Justice for decision unless the parties in dispute agree to submit it to arbitration.

ARTICLE XIV

(1) The present Convention shall remain open for signature for three months from this day's date and shall thereafter remain open for acceptance.

(2) Governments may become parties to the Convention by—

(i) signature without reservation as to acceptance;

(ii) signature subject to acceptance followed by acceptance; or

(iii) acceptance.

(3) Acceptance shall be effected by the deposit of an instrument of acceptance with the Bureau, which shall inform all Governments that have already signed or accepted the Convention of each signature and deposit of an acceptance and of the date of such signature or deposit.

ARTICLE XV

(1) The present Convention shall come into force twelve months after the date on which not less than ten Governments have become parties to the Convention, including five Governments of countries each with not less than 500,000 gross tons of tanker tonnage.

(2) (a) For each Government which signs the Convention without reservation as to acceptance or accepts the Convention before the date on which the Convention comes into force in accordance with paragraph (1) of this Article it shall come into force on that date. For each Government which accepts the Con-

vention on or after that date, it shall come into force three months after the date of the deposit of that Government's acceptance.

(b) The Bureau shall, as soon as possible, inform all Governments which have signed or accepted the Convention of the date on which it will come into force.

ARTICLE XVI

(1) Upon the request of any Contracting Government a proposed amendment of the present Convention shall be communicated by the Bureau to all Contracting Governments for consideration.

(2) Any amendment communicated to Contracting Governments for consideration under paragraph (1) of this Article shall be deemed to have been accepted by all Contracting Governments and shall come into force on the expiration of a period of six months after it has been so communicated, unless any one of the Contracting Governments shall have made a declaration not less than two months before the expiration of that period that it does not accept the amendment.

(3) (a) A conference of Contracting Governments to consider amendments of the Convention proposed by any Contracting Government shall be convened by the Bureau upon the request of one-third of the Contracting Governments.

(b) Every amendment adopted by such a conference by a two-thirds majority vote of the Contracting Governments represented shall be communicated by the Bureau to all Contracting Governments for their acceptance.

(4) Any amendment communicated to Contracting Governments for their acceptance under paragraph (3) of this Article shall come into force for all Contracting Governments except those which before it comes into force make a declaration that they do not accept the amendment, twelve months after the date on which the amendment is accepted by two-thirds of the Contracting Governments.

(5) Any declaration under this Article shall be made by a notification in writing to the Bureau which shall notify all Contracting Governments of the receipt of the declaration.

(6) The Bureau shall inform all signatory and Contracting Governments of any amendments which come into force under this Article, together with the date on which such amendments shall come into force.

ARTICLE XVII

(1) The present Convention may be denounced by any Contracting Government at any time after the expiration of a period

of five years from the date on which the Convention comes into force for that Government.

(2) Denunciation shall be effected by a notification in writing addressed to the Bureau, which shall notify all the Contracting Governments of any denunciation received and of the date of its receipt.

(3) A denunciation shall take effect twelve months, or such longer period as may be specified in the notification, after its receipt by the Bureau.

ARTICLE XVIII

(1) (a) Any Government may, at the time of signature or acceptance of the present Convention, or at any time thereafter, declare by notification in writing given to the Bureau that the Convention shall extend to any of the territories for whose international relations it is responsible.

(b) The Convention shall, from the date of the receipt of the notification, or from such other date as may be specified in the notification, extend to the territories named therein.

(2) (a) Any Contracting Government which has made a declaration under paragraph (1) of this Article may, at any time after the expiration of a period of five years from the date on which the Convention has been so extended to any territory, give notification in writing to the Bureau, declaring that the Convention shall cease to extend to any such territory named in the notification.

(b) The Convention shall cease to extend to any territory mentioned in such notification twelve months, or such longer period as may be specified therein, after the date of receipt of the notification by the Bureau.

(3) The Bureau shall inform all Contracting Governments of the extension of the Convention to any territories under paragraph (1) of this Article, and of the termination of any such extension under paragraph (2) of this Article, stating in each case the date from which the Convention has been, or will cease to be, so extended.

ARTICLE XIX

(1) In case of war or other hostilities, a Contracting Government which considers that it is affected, whether as a belligerent or as a neutral, may suspend the operation of the whole or any part of the present Convention in respect of all or any of its territories. The suspending Government shall immediately give notice of any such suspension to the Bureau.

(2) The suspending Government may at any time terminate such suspension and shall in any event terminate it as soon as it ceases to be justified under paragraph (1) of this Article. Notice of such termination shall be given immediately to the Bureau by the Government concerned.

(3) The Bureau shall notify all Contracting Governments of any suspension or termination of suspension under this Article.

ARTICLE XX

As soon as the present Convention comes into force it shall be registered by the Bureau with the Secretary-General of the United Nations.

ARTICLE XXI

The duties of the Bureau shall be carried out by the Government of the United Kingdom of Great Britain and Northern Ireland unless and until the Inter-Governmental Maritime Consultative Organisation comes into being and takes over the duties assigned to it under the Convention signed at Geneva on the 6th day of March, 1948, and thereafter the duties of the Bureau shall be carried out by the said Organisation.

In witness whereof the undersigned plenipotentiaries have signed the present Convention.

Done in London this twelfth day of May, 1954, in English and French, both texts being equally authoritative, in a single copy, which shall be deposited with the Bureau and of which the Bureau shall transmit certified copies to all signatory and Contracting Governments.

ANNEX A

Prohibited Zones

(1) Subject to paragraph (3) of this Annex, the prohibited zones in relation to tankers shall be all sea areas within 50 miles from land, with the following exceptions:—

(a) The Adriatic Zones

Within the Adriatic Sea the prohibited zones off the coasts of Italy and Yugoslavia respectively shall each extend for a distance of 30 miles from land, excepting only the island of Vis. When the present Convention has been in force for a period of three years the said zones shall each be extended by a further 20 miles in width unless the two Governments agree to postpone such extension. In the event of such an agreement the said

Governments shall notify the Bureau accordingly not less than three months before the expiration of such period of three years and the Bureau shall notify all Contracting Governments of such agreement.

(b) The North Sea Zone

The North Sea Zone shall extend for a distance of 100 miles from the coasts of the following countries:—

Belgium,
Denmark,
the Federal Republic of Germany,
the Netherlands,
the United Kingdom of Great Britain and Northern Ireland
but not beyond the point where the limit of a 100-mile zone off the west coast of Jutland intersects the limit of the 50-mile zone off the coast of Norway.

(c) The Atlantic Zone

The Atlantic Zone shall be within a line drawn from a point on the Greenwich meridian 100 miles in a north-north-easterly direction from the Shetland Islands; thence northwards along the Greenwich meridian to latitude 64° north; thence westwards along the 64th parallel to longitude 10° west; thence to latitude 60° north, longitude 14° west; thence to latitude $54^{\circ} 30'$ north, longitude 30° west; thence to latitude $44^{\circ} 20'$ north, longitude 30° west; thence to latitude 48° north, longitude 14° west; thence eastwards along the 48th parallel to a point of intersection with the 50-mile zone off the coast of France. Provided that in relation to voyages which do not extend seawards beyond the Atlantic Zone as defined above, and which are to ports not provided with adequate facilities for the reception of oily residue, the Atlantic Zone shall be deemed to terminate at a distance of 100 miles from land.

(d) The Australian Zone

The Australian Zone shall extend for a distance of 150 miles from the coasts of Australia, except off the north and west coasts of the Australian mainland between the point opposite Thursday Island and the point on the west coast at 20° south latitude.

(2) Subject to paragraph (3) of this Annex the prohibited zones in relation to ships other than tankers shall be all sea areas within 50 miles from land with the following exceptions:

(a) The Adriatic Zone

Within the Adriatic Sea the prohibited zones off the coasts of Italy and Yugoslavia respectively shall each extend for a distance of 20 miles from land, excepting only the island of Vis. After the expiration of a period of three years following the application of prohibited zones to ships other than tankers in accordance with paragraph (2) of Article III the said zones shall each be extended by a further 30 miles in width unless the two Governments agree to postpone such extension. In the event of such an agreement the said Governments shall notify the Bureau accordingly not less than three months before the expiration of such period of three years, and the Bureau shall notify all Contracting Governments of such agreement.

(b) The North Sea and Atlantic Zones

The North Sea and Atlantic Zones shall extend for a distance of 100 miles from the coasts of the following countries:—

Belgium

Denmark

the Federal Republic of Germany

Ireland

the Netherlands

the United Kingdom of Great Britain and Northern Ireland

but not beyond the point where the limit of a 100-mile zone off the west coast of Jutland intersects the limit of the 50-mile zone off the coast of Norway.

(3) (a) Any Contracting Government may propose:—

- (i) the reduction of any zone off the coast of any of its territories;
- (ii) the extension of any such zone to a maximum of 100 miles from any such coast,

by making a declaration to that effect and the reduction or extension shall come into force after the expiration of a period of six months after the declaration has been made, unless any one of the Contracting Governments shall have made a declaration not less than two months before the expiration of that period that its interests are affected either by reason of the proximity of its coasts or by reason of its ships trading in the area, and that it does not accept the reduction or extension, as the case may be.

(b) Any declaration under this paragraph shall be made by a notification in writing to the Bureau which shall notify all Contracting Governments of the receipt of the declaration.

[Annex B—Form of Oil Record Book—omitted.]

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B. STATUS OF THE CONVENTION AS OF OCTOBER 25, 1956 (NOT IN FORCE)

(1) SIGNATORIES. According to information derived from *Cmd.* 9197 and a letter to the Editor from the British Foreign Office, dated 30 April 1956, the following countries became signatories in the manner indicated within the three months provided for in Article XIV of the Convention:

Belgium (subject to acceptance)
 Canada (subject to ratification)
 Ceylon (subject to acceptance)
 Denmark (subject to acceptance)
 Finland (subject to acceptance)
 France (subject to acceptance)
 Federal Republic of Germany (subject to acceptance)
 Greece (subject to acceptance)
 Ireland (subject to acceptance)
 Italy (subject to acceptance)
 Japan (subject to acceptance)
 Liberia (subject to acceptance or ratification by the President
 with the advice and consent of the Liberian Senate)
 Mexico (subject to acceptance)
 Netherlands (subject to acceptance)
 New Zealand (subject to acceptance)
 Norway (subject to acceptance)
 Sweden (subject to acceptance)
 United Kingdom (subject to acceptance)
 Union of Soviet Socialist Republics (subject to acceptance)
 Yugoslavia (subject to acceptance)

* * *

(2) RATIFICATIONS. According to letters to the Editor from the British Foreign Office, dated 3 July and 26 September 1956, the following countries have ratified the Convention on the dates indicated. Article XV provides that the Convention shall come into force 12 months after the date on which not less than 10 Governments, including 5, each of which have not less than 500,000 gross tons of tanker tonnage, have become parties. The

Treaty Section, Office of Legal Affairs, United Nations Secretariat, reports no further ratifications as of October 25, 1956.

	*	*	*
United Kingdom			6 May 1955
Mexico			10 May 1956
Sweden			24 May 1956
Federal Republic of Germany			11 June 1956

* * * * *

**c. OIL IN NAVIGABLE WATERS ACT, 1955 (3 AND 4 ELIZ. 2, CH. 25)
(EXCERPTS)**

(1) NOTE. This example of national legislation enacted in order to give effect to the Convention is taken from a slip copy furnished through the courtesy of the British Foreign Office. The Sections not printed deal with the following subjects:

- Section 7. Keeping of records of matters relating to oil.
- Section 8. Facilities in harbours for disposal of oil residues.
- Section 9. Restrictions on transfer of oil at night.
- Section 10. Duty to report discharges of oil into waters of harbours.
- Section 11. Powers of inspection.
- Section 12. Prosecutions.
- Section 13. Enforcement and application of fines.
- Section 15. Power of Minister to grant exemptions.
- Section 17. Provisions as to Isle of Man, Channel Islands, colonies and dependencies.
- Section 18. Enforcement of Conventions relating to oil pollution.
- Section 19. Annual Report.
- Section 20. General provisions as to Orders in Council, regulations and orders.
- Section 21. Financial provisions.
- Section 22. Interpretation.
- Section 23. Provisions as to Northern Ireland.
- Section 24. Repeal and savings.

* * *

(a) TEXT OF EXCERPTS FROM ACT

* * *

CHAPTER 25

An Act to enable effect to be given to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and otherwise to make new provision for preventing the pollution of navigable waters by oil.

[6th May, 1955]

WHEREAS a Convention entitled "The International Convention for the Prevention of Pollution of the Sea

by Oil, 1954" (in this Act referred to as "The Convention of 1954") was signed on behalf of Her Majesty's Government in the United Kingdom in London on the twelfth day of May, nineteen hundred and fifty-four:

And whereas it is expedient to enable effect to be given to that Convention, and otherwise to make new provision for preventing the pollution of navigable waters by oil:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Discharge of
certain oils into
prohibited sea
areas.

1.—(1) If any oil to which this section applies from a British ship registered in the United Kingdom into a part of the sea which, in relation to that ship, is a prohibited sea area, or if any mixture containing oil to which this section applies is discharged from such a ship into such a part of the sea with the consequence that the oil in the mixture fouls the surface of the sea, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence under this section.

(2) This section applies—

(a) to crude oil, fuel oil and lubricating oil, and

(b) to heavy diesel oil, as defined by regulations made under this section by the Minister of Transport and Civil Aviation (in this Act referred to as "the Minister"),

and shall also apply to any other description of oil which may be prescribed by the Minister, having regard to the provisions of any subsequent Convention in so far as it relates to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into a prohibited sea area.

(3) Regulations made under this section by the Minister may make exceptions from the operation of subsection (1) of this section, either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in

relation to particular descriptions of oil or mixtures containing oil or to the discharge of oil or mixtures in prescribed circumstances, or in relation to particular areas of the sea.

(4) For the purposes of any proceedings for an offence under this section in respect of the discharge of a mixture containing oil to which this section applies,—

(a) if it is proved that there were not less than one hundred parts of the oil in a million parts of the mixture, it shall be conclusively presumed that the oil in the mixture fouled the surface of the sea;

(b) if it is proved that there were less than one hundred parts of the oil in a million parts of the mixture, it shall be conclusively presumed that the oil in the mixture did not foul the surface of the sea.

(5) In this Act ‘subsequent Convention’ means any Convention subsequent to the Convention of 1954, being a Convention accepted by Her Majesty’s Government in the United Kingdom.

Designation of
prohibited sea
areas.

2.—(1) For the purposes of this Act the areas of the sea designated by or in accordance with this section shall be prohibited sea areas in relation to tankers, and to vessels other than tankers, respectively.

(2) Subject to the following provisions of this section,—

(a) the areas specified in Part I of the Schedule to this Act shall, as from the coming into operation of this paragraph, be prohibited sea areas in relation to tankers;

(b) the areas specified in Part II of that Schedule shall, as from the coming into operation of this paragraph, be prohibited sea areas in relation to vessels other than tankers.

(3) As from the coming into operation of this subsection, the areas specified in Part III of the Schedule to this Act, and any other area designated by order of the Minister for the purpose of giving effect to the provisions of the Convention of 1954 which relate to Australia, shall (subject to the following provisions of this section) be prohibited sea areas

in relation to tankers, in addition to the areas specified in Part I of that Schedule.

(4) As from the coming into operation of this subsection, the areas specified in Part IV of the Schedule to this Act shall (subject to the following provisions of this section) be prohibited sea areas in relation to vessels other than tankers, in addition to the areas specified in Part II of that Schedule.

(5) The Minister, if he considers it necessary to do so for the purpose of protecting the coasts and territorial waters of the United Kingdom against pollution by oil, may by order—

(a) designate any area of the sea, outside the territorial waters of the United Kingdom and outside the areas specified in Part I of the Schedule to this Act, as a prohibited sea area in relation to tankers;

(b) designate any area of the sea, outside the territorial waters of the United Kingdom and outside the areas specified in Part II of that Schedule, as a prohibited sea area in relation to vessels other than tankers.

(6) The powers conferred by paragraphs (a) and (b) of the last preceding subsection shall be exercisable either before or after the coming into operation of subsection (3) or (as the case may be) subsection (4) of this section; and any area designated by an order under paragraph (a) of the last preceding subsection before the coming into operation of subsection (3) of this section, or designated by an order under paragraph (b) of the last preceding subsection before the coming into operation of subsection (4) of this section, shall continue thereafter to be a prohibited sea area by virtue of the order, in so far as it is not a prohibited sea area by virtue of being included in Part III or (as the case may be) Part IV of the Schedule to this Act.

(7) For the purpose of giving effect to any variation of the prohibited zones referred to in the Convention of 1954, in accordance with the provisions of that Convention or of any subsequent Convention, the Minister may by order vary any of the areas specified in any Part of the Schedule to this Act, or declare that any area specified in a Part of that

Schedule shall cease to be included therein.

(8) For the purpose of giving effect to any subsequent Convention, the Minister may by order designate, as a prohibited sea area in relation to tankers, or to vessels other than tankers, any area of the sea, outside the territorial waters of the United Kingdom, which apart from the order is not a prohibited sea area in relation to tankers, or to vessels other than tankers, as the case may be.

Discharge of oil
into United
Kingdom waters.

3.—(1) If any oil or mixture containing oil is discharged into waters to which this section applies from any vessel, or from any place on land, or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel), then subject to the provisions of this Act —

(a) if the discharge is from a vessel, the owner or master of the vessel, or

(b) if the discharge is from a place on land, the occupier of that place, or

(c) if the discharge is from apparatus used for transferring oil from or to a vessel, the person in charge of the apparatus,
shall be guilty of an offence under this section.

(2) This section applies to the following waters, that is to say—

(a) the whole of the sea within the seaward limits of the territorial waters of the United Kingdom, and

(b) all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.

(3) A harbour authority may appoint a place within their jurisdiction where the ballast water of vessels in which a cargo of petroleum-spirit has been carried may be discharged into the waters of the harbour, at such times, and subject to such conditions, as the authority may determine; and, where a place is so appointed, the discharge of ballast water from such a vessel shall not constitute an offence under this section, if the ballast water is discharged at that place, and at a time and in accordance with the conditions so determined, and the ballast water contains no oil other than petroleum-spirit.

In this subsection "petroleum-spirit" has the same meaning as in the Petroleum (Consolidation) Act, 1928.

(4) In this Act "place on land" includes anything resting on the bed or shore of the sea, or of any other waters to which this section applies, and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea or of any such waters; and "occupier", in relation to any such thing as is mentioned in the preceding provisions of this subsection, if it has no occupier, means the owner thereof, and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or vehicle and not the occupier of the land on which the wagon or vehicle stands.

(5) In this Act—

"harbour authority" means a person or body of persons empowered by an enactment to make charges in respect of vessels entering a harbour in the United Kingdom or using facilities therein;

"harbour in the United Kingdom" means a port, estuary, haven, dock, or other place which fulfills the following conditions, that is to say,—

(a) that it contains waters to which this section applies, and

(b) that a person or body of persons is empowered by an enactment to make charges in respect of vessels entering that place or using facilities therein.

In this subsection "enactment" includes a local enactment, and "charges" means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons, and of charges in respect of pilotage.

Special defences
under ss. 1 and
3.

4.—(1) Where a person is charged with an offence under section one of this Act, or is charged with an offence under the last preceding section as the owner or master of a vessel, it shall be a defence to prove that the oil or mixture in question was discharged for the purpose of securing the safety of the vessel, or of preventing damage to the vessel or her cargo, or of saving life:

Provided that a defence under this subsection shall not have effect if the court is satisfied that the discharge of the oil or mixture was not necessary for the purpose alleged in the defence or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in the preceding subsection, it shall also be a defence to prove—

(a) that the oil or mixture escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture, or

(b) that the oil or mixture escaped by reason of leakage, that the leakage was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(3) Where a person is charged with an offence under the last preceding section as the occupier of a place on land, or as the person in charge of any apparatus, from which oil or a mixture containing oil is alleged to have escaped, it shall be a defence to prove that the escape of the oil or mixture was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(4) Without prejudice to the last preceding subsection, it shall be a defence for the occupier of a place on land, who is charged with an offence under the last preceding section, to prove that the discharge was caused by the act of a person who was in that place without the permission (express or implied) of the occupier.

(5) Where a person is charged with an offence under the last preceding section in respect of the discharge of a mixture containing oil from a place on land, it shall (without prejudice to any other defence under this section) be a defence to prove—

(a) that the oil was contained in an effluent produced by operations for the refining of oil;

(b) that it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into waters to which the last preceding section applies; and

(c) that all reasonably practicable steps had been taken for eliminating oil from the effluent:

Provided that a defence under this subsection shall not have effect if it is proved that, at a time to which the charge relates, the surface of the waters into which the mixture was discharged from the place in question, or land adjacent to those waters, was fouled by oil, unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

(6) Where any oil, or mixture containing oil, is discharged in consequence of—

(a) the exercise of any power conferred by sections five hundred and thirty to five hundred and thirty-two of the Merchant Shipping Act, 1894 (which relate to the removal of wrecks by harbour, conservancy and lighthouse authorities), or

(b) the exercise, for the purpose of preventing an obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned vessels which is exercisable by a harbour authority under any local enactment,

and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section one of this Act, or under the last preceding section, in respect of that discharge, the authority or person shall not be convicted of that offence unless it is shown that they or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

(7) The last preceding subsection shall apply to the exercise of any power conferred by section thirteen of the Dockyard Ports Regulations Act, 1865 (which relates to the removal of obstructions to dockyard ports), as it applies to the exercise of any such power as is mentioned in paragraph (a) of that sub-

section, as if references to the authority exercising the power were references to the Queen's harbour master for the port in question.

Equipment in
ships to prevent
oil pollution.

5.—(1) For the purpose of preventing or reducing discharges of oil and mixture containing oil into the sea, the Minister may make regulations requiring British ships registered in the United Kingdom to be fitted with such equipment, and to comply with such other requirements, as may be prescribed.

(2) Without prejudice to the generality of the preceding subsection, where any regulations made thereunder require ships to be fitted with equipment of a prescribed description, the regulations may provide that equipment of that description—

(a) shall not be installed in a ship to which the regulations apply unless it is of a type tested and approved by a person appointed by the Minister;

(b) while installed in such a ship, shall not be treated as satisfying the requirements of the regulations unless, at such times as may be specified in the regulations, it is submitted for testing and approval by a person so appointed.

(3) The Minister may appoint persons to carry out tests for the purposes of any regulations made under this section, and in respect of the carrying out of such tests, may charge such fees as, with the approval of the Treasury, may be prescribed by the regulations.

(4) Every surveyor of ships shall be taken to be a person appointed by the Minister to carry out tests for the purposes of any regulations made under this section, in so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.

(5) If, in the case of any ship, the provisions of any regulations under this section which apply to that ship are contravened, the owner or master of the ship shall be guilty of an offence under this section.

Penalties for
offences under
ss. 1, 3 and 5.

6. A person guilty of an offence under section one or section three of this Act, or under the last preceding section, shall, on conviction or indictment, or on summary conviction, be liable to a fine:

Provided that an offence shall not by virtue of this

General
provisions as to
application of
Act.

section be punishable on summary conviction by a fine exceeding one thousand pounds.

14.—(1) The provisions of this Act, except provisions which are expressed to apply only to British ships registered in the United Kingdom, shall (subject to any exemptions expressly conferred by or under this Act) apply to all vessels, whether registered or not, and of whatever nationality.

(2) Her Majesty may by Order in Council direct that, subject to such exceptions and modifications as may be specified in the Order, any regulations made under section five of this Act, or under subsection (1) of section seven of this Act, shall apply to ships registered in countries and territories other than the United Kingdom at any time when they are in a harbour in the United Kingdom, or are within the seaward limits of the territorial waters of the United Kingdom while on their way to or from a harbour in the United Kingdom.

(3) An Order in Council under the preceding subsection shall not be made so as to impose different requirements in respect of ships of different countries or territories:

Provided that if Her Majesty is satisfied, as respects any country or territory, that ships registered there are required, by the law of that country or territory, to comply with provisions which are substantially the same as, or equally effective with, the requirements imposed by virtue of the Order, Her Majesty may by Order in Council direct that those requirements shall not apply to any ship registered in that country or territory if the ship complies with the said provisions applicable thereto under the law of that country or territory.

(4) No regulation shall by virtue of an Order in Council under this section apply to any ship as being within a harbour in the United Kingdom, or on her way to or from such a harbour, if the ship would not have been within the harbour, or, as the case may be, on her way to or from the harbour, but for stress of weather or any other circumstance which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

16.—(1) The provisions of this Act do not apply to vessels of Her Majesty's navy, nor to Government ships in the service of the Admiralty while employed for the purposes of Her Majesty's navy.

(2) Subject to the preceding subsection—

(a) provisions of this Act which are expressed to apply only to British ships registered in the United Kingdom apply to Government ships so registered as they apply to other ships which are registered in the United Kingdom as British ships;

(b) provisions of this Act which are expressed to apply to vessels generally apply to Government ships as they apply to other vessels.

(3) In this section "Government ships" has the same meaning as in section eighty of the Merchant Shipping Act, 1906.

25.—(3) This Act shall come into operation on such day as the Minister may by order appoint; and different days may be appointed for the purposes of different provisions of this Act.

SCHEDULE

Prohibited Sea Areas

Part I.—Initial Areas for Tankers

1. The whole of the sea which lies—

- (a) outside the territorial waters of the United Kingdom, and
- (b) within 100 miles from the coast of any of the following countries, that is to say, the United Kingdom, Belgium, the Netherlands, the Federal Republic of Germany, and Denmark.

2. The whole of the sea which lies—

- (a) south of latitude 62° north, and
- (b) within 50 miles from the coast of Norway.

3. So much of the Atlantic Ocean and of the English Channel, outside the territorial waters of the United Kingdom, and outside the area specified in paragraph 1 of this Part of this Schedule, as lies within a line drawn from a point on the Greenwich meridian 100 miles in a north-north-easterly direction from the Shetland Isles; thence northwards along the Greenwich meridian to latitude 64° north; thence westwards along the 64th parallel to longitude

10° west; thence to latitude 60° north, longitude 14° west; thence to latitude 54° 30' north, longitude 30° west; thence to latitude 44° 20' north, longitude 30° west; thence to latitude 48° north, longitude 14° west; thence eastwards along the 48th parallel to the coast of France.

Part II.—Initial Areas for Vessels other than Tankers

1. The whole of the sea which lies—

- (a) outside the territorial waters of the United Kingdom, and
- (b) within 100 miles from the coast of any of the following countries, that is to say, the United Kingdom, the Republic of Ireland, Belgium, the Netherlands, the Federal Republic of Germany, and Denmark, or within 100 miles from the coast of any of the Channel Islands.

2. The whole of the sea which lies—

- (a) south of latitude 62° north, and
- (b) within 50 miles from the coast of Norway.

Part III.—Additional Areas for Tankers

1. The whole of the sea which lies within 50 miles from land, exclusive of—

- (a) the areas specified in Part I of this Schedule,
- (b) any area within the seaward limits of the territorial waters of the United Kingdom, and
- (c) the Adriatic Sea.

2. So much of the Adriatic Sea as lies within 50 miles from the coast of Albania, and so much of the remainder of the Adriatic Sea as lies within 30 miles from any other coast (the island of Vis being disregarded).

Part IV.—Additional Areas for Vessels other than Tankers

1. The whole of the sea which lies within 50 miles from land, exclusive of—

- (a) the areas specified in Part II of this Schedule.
- (b) any area within the seaward limits of the territorial waters of the United Kingdom, and
- (c) the Adriatic Sea.

2. So much of the Adriatic Sea as lies within 50 miles from the coast of Albania, and so much of the remainder of the Adriatic Sea as lies within 20 miles from any other coast (the island of Vis being disregarded).

E. International Conventions on Maritime Law, Brussels, May 10, 1952

1. NOTE. The International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, The International Convention for The Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions or other Incidents of Navigation, and The International Convention relating to the Arrest of Seagoing Ships, were opened for signature on May 10, 1952, by the states represented at the Ninth Diplomatic Conference on Maritime Law. All three have entered into force in accordance with the status tables in 2, hereafter. The Civil and Penal Conventions were signed on May 10, 1952, by Belgium, Brazil, Denmark, France, Federal Republic of Germany, Greece, Italy, Monaco, Nicaragua, Spain, United Kingdom, and Yugoslavia. The Holy See, Lebanon, and Egypt signed on February 4, 1954, May 25, 1954, and January 6, 1955, respectively. The dates and signatures to the Arrest Convention were identical except that Denmark did not sign. The three Conventions were based on drafts prepared by the International Maritime Committee at its 1951 Naples Conference. *Bulletin No. 105* of the International Maritime Committee contains the proceedings and drafts of that Conference. The International Maritime Committee held another Plenary Conference at Madrid in September 1955, and prepared three draft Conventions dealing with Limitation of Shipowner's Liability, Sea Carrier's Liabilities to Passengers, and Stowaways, respectively. The Delegation representing the Maritime Law Association of the United States voted against the first, and abstained on the second and third. *Document No. 393*, March 23, 1956, of The Maritime Law Association of the United States, prints the Report of the American Delegation and the three draft Conventions prepared at Madrid. A Diplomatic Conference for the consideration of these drafts was held in Brussels in October 1957. A Limitation of Liability Convention was signed by 22 nations. The United States did not sign. *The New York Times*, 11 October 1957, p. 48.

The texts of the three Brussels Conventions of 1952 which follow are taken from certified copies of 28 April 1956, furnished through the courtesy of the Treaty Service of the Belgian Ministry of Foreign Affairs. The texts are also printed in *British Command Paper* No. 8954.

* * * * *

a. INTERNATIONAL CONVENTION ON CERTAIN RULES CONCERNING CIVIL JURISDICTION IN MATTERS OF COLLISION, BRUSSELS, MAY 10, 1952. (TEXT)

* * *

The High Contracting Parties,

Having recognized the advisability of establishing by agreement certain uniform rules relating to civil jurisdiction in matters of collision, have decided to conclude a Convention for this purpose and thereto have agreed as follows:

ARTICLE 1

(1) An action for collision occurring between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced:

(a) either before the Court where the defendant has his habitual residence or a place of business;

(b) or before the Court of the place where arrest has been effected of the defendant ship or of any other ship belonging to the defendant which can be lawfully arrested, or where arrest could have been effected and bail or other security has been furnished;

(c) or before the Court of the place of collision when the collision has occurred within the limits of a port or in inland waters.

(2) It shall be for the Plaintiff to decide in which of the Courts referred to in Section I of this article the action shall be instituted.

(3) A claimant shall not be allowed to bring a further action against the same defendant on the same facts in another jurisdiction, without discontinuing an action already instituted.

ARTICLE 2

The provisions of Article 1 shall not in any way prejudice the right of the parties to bring an action in respect of a collision before a Court they have chosen by agreement or to refer it to arbitration.

ARTICLE 3

(1) Counterclaims arising out of the same collision can be brought before the Court having jurisdiction over the principal action in accordance with the provisions of Article 1.

(2) In the event of there being several claimants, any claimant may bring his action before the Court previously seized of an action against the same party arising out of the same collision.

(3) In the case of a collision or collisions in which two or more vessels are involved nothing in the Convention shall prevent any Court seized of an action by reasons of the provisions of this Convention, from exercising jurisdiction under its national laws in further actions arising out of the same incident.

ARTICLE 4

This Convention shall also apply to an action for damage caused by one ship to another or to the property or persons on board such ships through the carrying out of or the omission to carry out a manoeuvre or through non-compliance with regulations even when there has been no actual collision.

ARTICLE 5

Nothing contained in this Convention shall modify the rules of

law now or hereafter in force in the various contracting States in regard to collisions involving warships or vessels owned by or in the service of a State.

ARTICLE 6

This Convention does not affect claims arising from contracts of carriage or from any other contracts.

ARTICLE 7

This Convention shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

ARTICLE 8

The provisions of this Convention shall be applied as regards all persons interested when all the vessels concerned in any action belong to States of the High Contracting Parties.

Provided always that:

(1) As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the contracting States conditional upon reciprocity;

(2) Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.

ARTICLE 9

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

ARTICLE 10

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

ARTICLE 11

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

ARTICLE 12

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

ARTICLE 13

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 12(a).

ARTICLE 14

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

ARTICLE 15

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

ARTICLE 16

(a) Any High Contracting Party may at the time of its ratification or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign

Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b) A High Contracting Party which has made a declaration under paragraph (a) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

Done in Brussels, in a single original in the French and English languages, the two texts being equally authentic, on May 10, 1952.

[Signatures omitted.]

* * * * *

b. INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO PENAL JURISDICTION IN MATTERS OF COLLISIONS OR OTHER INCIDENTS OF NAVIGATION, BRUSSELS, MAY 10, 1952. (TEXT)

* * *

The High Contracting Parties,

Having recognized the advisability of establishing by agreement certain uniform rules relating to penal jurisdiction in matters of collision or other incidents of navigation, have decided to conclude a Convention for this purpose and thereto have agreed as follows:

ARTICLE 1

In the event of a collision or any other incident of navigation concerning a sea-going ship and involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, criminal or disciplinary proceedings may be instituted only before the judicial or administrative authorities of the State of which the ship was flying the flag at the time of the collision or other incident of navigation.

ARTICLE 2

In the case provided for in the preceding Article, no arrest or detention of the vessel shall be ordered, even as a measure of investigation, by any authorities other than those whose flag the ship was flying.

ARTICLE 3

Nothing contained in this Convention shall prevent any State from permitting its own authorities, in cases of collision or other incidents of navigation, to take any action in respect of certificates of competence or licences issued by that State or to prosecute its own nationals for offences committed while on board a ship flying the flag of another State.

ARTICLE 4

This Convention does not apply to collisions or other incidents of navigation occurring within the limits of a port or in inland waters.

Furthermore the High Contracting Parties shall be at liberty, at the time of signature, ratification or accession to the Convention, to reserve to themselves the right to take proceedings in respect of offences committed within their own territorial waters.

ARTICLES 5-12 (Identical with Articles 9-16 of Civil Convention. (a. above))

Done at Brussels, in a single copy, May 10, 1952, in the French and English languages, the two texts being equally authentic.

[Signatures omitted.]

* * * * *

c. INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEAGOING SHIPS, BRUSSELS, MAY 10, 1952. (TEXT)

* * *

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to the arrest of sea-going ships, have decided to conclude a convention, for this purpose and thereto have agreed as follows:

ARTICLE 1

In this Convention the following words shall have the meanings hereby assigned to them:

(1) "Maritime Claim" means a claim arising out of one or more of the following:

(a) damage caused by any ship either in collision or otherwise;

(b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;

(c) salvage;

(d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;

(e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;

(f) loss of or damage to goods including baggage carried in any ship;

(g) general average;

(h) bottomry;

(i) towage;

(j) pilotage;

(k) goods or materials wherever supplied to a ship for her operation or maintenance;

(l) construction, repair or equipment of any ship or dock charges and dues;

(m) wages of Masters, Officers, or crew;

(n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;

(o) disputes as to the title to or ownership of any ship;

(p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;

(q) the mortgage or hypothecation of any ship.

(2) "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

(3) "Person" includes individuals, partnerships and bodies corporate, governments, their Departments, and Public Authorities.

(4) "Claimant" means a person who alleges that a maritime claim exists in his favor.

ARTICLE 2

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or

restrict any right or powers vested in any Governments or their Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

ARTICLE 3

(1) Subject to the provisions of para (4) of this Article and of Article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1, (1) (o), (p) or (q).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

ARTICLE 4

A ship may only be arrested under the authority of a Court or

of the appropriate judicial authority of the Contracting State in which the arrest is made.

ARTICLE 5

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1, (l), (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest.

In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.

The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

ARTICLE 6

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

ARTICLE 7

(1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

- (a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
- (b) if the claim arose in the country in which the arrest was made;

(c) if the claim concerns the voyage of the ship during which the arrest was made;

(d) if the claim arose out of a collision or in circumstances covered by Article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;

(e) if the claim is for salvage;

(f) if the claim is upon a mortgage or hypothecation of the ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with Article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two preceding paragraphs, the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

ARTICLE 8

(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

(2) A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any

Government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

(4) Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

ARTICLE 9

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which had seisin of the case, nor as creating any maritime liens which do not exist under such law or under the Convention or Maritime Mortgages and Liens, if the latter is applicable.

ARTICLE 10

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve

(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of Article 1, but to apply their domestic laws to such claims;

(b) the right not to apply the first paragraph of Article 3 to the arrest of a ship, within their jurisdiction, for claims set out in Article 1, paragraph (q).

ARTICLES 11-18 (Identical with Articles 9-16 of Civil Convention. (a. above))

Done in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic.

[Signatures omitted.]

* * * * *

2. Status of the 1952 Brussels Conventions as of 9 October 1956.
(From information furnished through the courtesy of the Treaty Service, Belgian Ministry of Foreign Affairs, and of Arnold W. Knauth, Esq., of the New York Bar.)

* * *

a. INTERNATIONAL CONVENTION ON CERTAIN RULES CONCERNING CIVIL JURISDICTION IN MATTERS OF COLLISION, BRUSSELS, MAY 10, 1952. ENTERED INTO FORCE ON 14 SEPTEMBER 1955

<i>Table of Ratifications and Accessions</i>		
<i>State</i>	<i>Date of Ratification or Accession (a)</i>	<i>Entered into Force</i>
Spain	8 December 1953	14 September 1955
Switzerland	28 May 1954 (a)	14 September 1955
Yugoslavia *	14 March 1955	14 September 1955
Costa Rica *	13 July 1955 (a)	13 January 1956
Egypt	24 August 1955	24 February 1956
Holy See	10 August 1956	10 February 1957

* With reservations.

* * *

b. INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO PENAL JURISDICTION IN MATTERS OF COLLISIONS OR OTHER INCIDENTS OF NAVIGATION, BRUSSELS, MAY 10, 1952. ENTERED INTO FORCE ON 20 NOVEMBER 1955

<i>Table of Ratifications and Accessions</i>		
<i>State</i>	<i>Date of Ratification or Accession (a)</i>	<i>Entered into Force</i>
Burma	8 July 1953 (a)	20 November 1955
Spain *	8 December 1954	20 November 1955
Switzerland	28 May 1954 (a)	20 November 1955
Haiti	17 September 1954 (a)	20 November 1955
France *	20 May 1955	20 November 1955
Costa Rica *	13 July 1955 (a)	13 January 1956
Egypt *	24 August 1955	24 February 1956
Vietnam (Rep.) *	26 November 1955 (a)	26 May 1956
Yugoslavia *	21 April 1956	21 October 1956
Holy See	10 August 1956	10 February 1957

* With reservations.

c. INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEA-GOING SHIPS, BRUSSELS, MAY 10, 1952. ENTERED INTO FORCE 24 FEBRUARY 1956

<i>Table of Ratifications and Accessions</i>		
<i>State</i>	<i>Date of Ratification or Accession (a)</i>	<i>Entered into Force</i>
Spain	8 December 1953	24 February 1956
Switzerland	28 May 1954 (a)	24 February 1956
Haiti	4 November 1954 (a)	24 February 1956
Costa Rica *	13 July 1955 (a)	24 February 1956
Egypt *	24 August 1955	24 February 1956
Holy See	10 August 1956	10 February 1957

* With reservations.

PART III

NATIONAL CLAIMS AND AGREEMENTS PROVIDING FOR AIR AND SEA ZONES FOR DEFENSIVE PURPOSES

PART III

NATIONAL CLAIMS AND AGREEMENTS PROVIDING FOR AIR AND SEA ZONES FOR DEFENSIVE PURPOSES

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SECTION I

AIR DEFENSE IDENTIFICATION ZONES

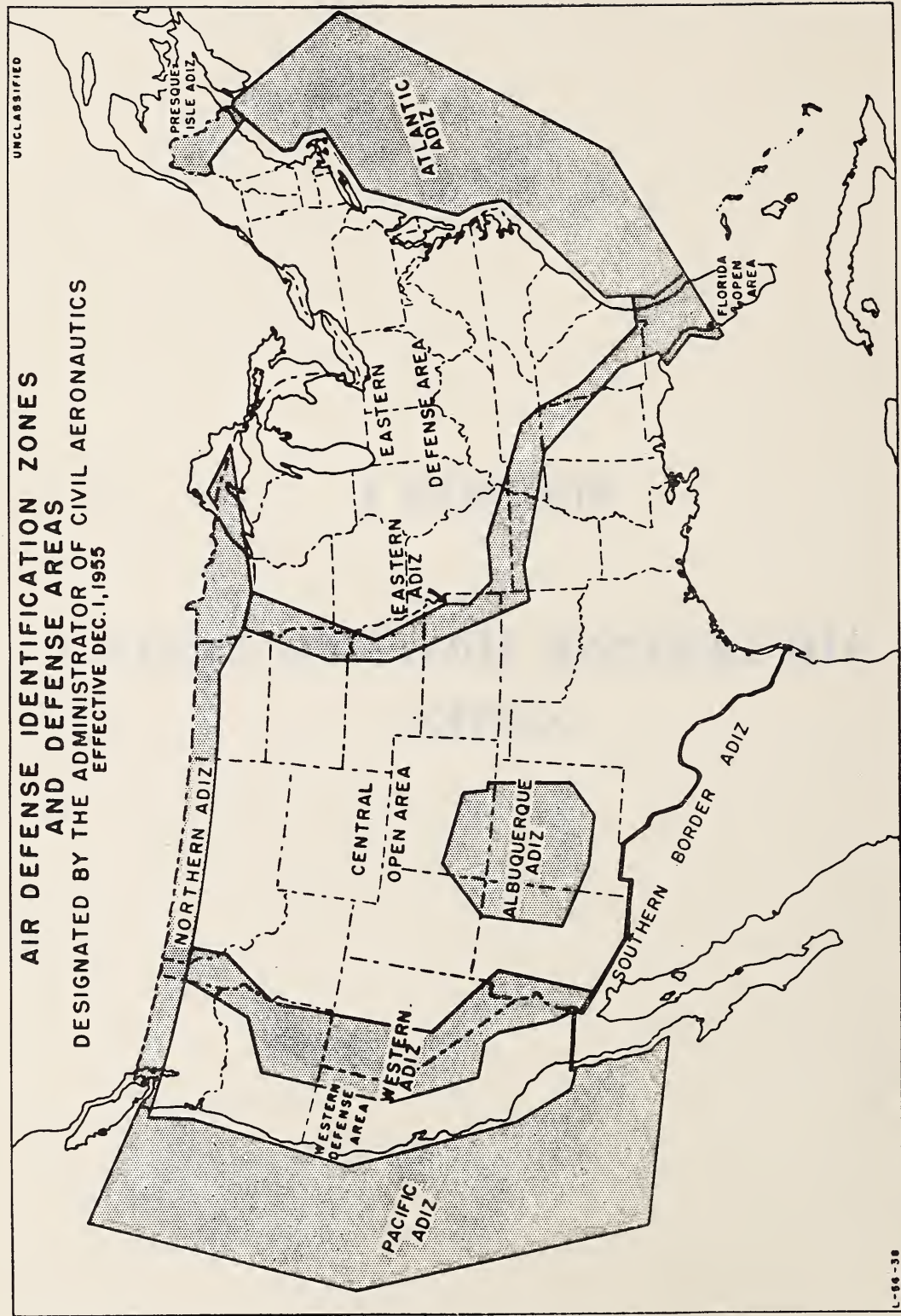


Figure 4.

SECTION I

AIR DEFENSE IDENTIFICATION ZONES

A. United States Air Defense Identification Zone

1. NOTE. By Public Law 778 of September 9, 1950, the Civil Aeronautics Act was amended by adding Subchapter XII, Security Provisions, Sections 1201-1205, which furnish the statutory authority for the domestic and coastal air defense identification zones which have been promulgated. The text of Subchapter XII may be found at 64 Stat. 825 and 49 U.S.C., Sections 701-705 (*U.S. Code, 1952 Edition*, page 7247). The President, in Executive Order No. 10197 (*Ibid.*, page 7247; 15 *Federal Register* 9180) of 21 December 1950, determined that action under this Subchapter was required in the interests of national security, and delegated authority to the Secretary of Commerce, who, in turn, delegated the authority to the Administrator of Civil Aeronautics. (16 *Federal Register* 99, published 4 January 1951.) Part 620 of the Regulations of the Administrator, establishing the Air Defense Identification Zones, was first promulgated on 27 December 1950 (15 *Federal Register* 9319). Since that time, there have been various amendments. The latest revision, effective 1 December 1955, is reprinted below (20 F.R. 8184). Amendments made to these Regulations up to August 1957 may be found in 21 *Federal Register* 9284 and 10310. The amendments eliminate the Albuquerque and Northern ADIZ's.

An important interpretation of these Regulations, which results in a significant difference between the United States and Canadian Regulations, reprinted, *infra*, is reprinted below with the permission of the Acting Director, Office of Air Traffic Control, Civil Aeronautics Administration. (Letter of 16 July 1956 to the Editor.) The letter states that the interpretation is still in effect. The interpretation was given in a letter of 31 December 1954 in response to an inquiry.

For a discussion upholding the validity under international law of the United States and Canadian Air Defense Identification Zones, see Martial, "State Control of the Air Space over the Territorial Sea and the Contiguous Zone," 30 *Canadian Bar Review* 245 (March 1952). See also, Murchison, "The Contiguous Air Space Zone in International Law" (Department of National Defence, Ottawa, Canada, Revised to 1 December 1956).

2. Security Control Regulations for Air Traffic

Civil Aeronautics Administration U.S. Department of Commerce

REGULATIONS OF THE ADMINISTRATOR

Part 620

Security Control of Air Traffic

(Revised effective December 1, 1955)

Pursuant to section 1201 of the Civil Aeronautics Act of 1938,

as amended (64 Stat. 825; 49 U. S. C. Supp 701), the President determined in Executive Order 10197 (published on December 22, 1950, in 15 F. R. 9180) that it is necessary in the interest of national security to establish security provisions for the use of aircraft in designated areas in the airspace above the United States, its Territories, and its Possessions (including areas of land or water administered by the United States under international agreement) : In accordance with such determination and the authority delegated to me by the Secretary of Commerce (published on January 4, 1951, in 16 F. R. 99), Part 620 was adopted. This part, as amended, is revised herewith as recommended by the Board of Security Control of Air Traffic in Air Defense after coordination with the Department of Defense, the Civil Aeronautics Board, and representatives of the industry. The Air Defense Identification Zones in the Continental United States are generally reduced in area along the boundaries of the country. Two new ADIZ's are designated which enclose the northeastern area of the United States and the area west of the Continental Divide. These two areas are designated as the Eastern Defense Area and the Western Defense Area. Flights entering these areas or any ADIZ are required to comply with Part 620, but exceptions are made for flights departing these areas. Although the 4,000-foot exception has been removed, aircraft which maintain a true air speed of 110 knots or less and an altitude of 1,500 feet or less above the terrain are now exempt from the requirements of this Part. A military function of the United States is involved. Therefore, compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act is not required. Part 620 is revised to read:

Subpart A—Introduction

Sec.

- 620.1 Basis and purpose.
- 620.2 Definitions.

Subpart B—Operating Rules

- 620.10 Scope.
- 620.11 Flight plans.
- 620.12 Reporting points.
- 620.13 Authorized exceptions.
- 620.14 Adherence to flight plans or air traffic clearances.
- 620.15 Emergency situations.
- 620.16 Radio failure.
- 620.17 Air defense security instructions.
- 620.18 Violations.

Subpart C—Designated Air Defense Identification Zones and Defense Areas

- 620.20 General.
- 620.21 Domestic ADIZ's.
- 620.22 Coastal ADIZ's.
- 620.23 Defense areas.

AUTHORITY: §§ 620.1 to 620.23 issued under sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 1201–1204, 64 Stat. 825; 49 U. S. C. 701–704.

SUBPART A—INTRODUCTION

§ 620.1 *Basis and purpose*—(a) *Basis*. This part is issued pursuant to sections 205 and 1201–1204 of the Civil Aeronautics Act of 1938, as amended (52 Stat. 984, 64 Stat. 825; 49 U. S. C. and Sup. 425, 701–704); Executive Order 10197 (15 F. R. 9180); and Department of Commerce Order 86, Amendment 5 (16 F. R. 99).

(b) *Purpose*. This part establishes rules which have been found necessary in the interest of national security to identify, locate, and control United States and foreign aircraft operated within areas designated by the Administrator of Civil Aeronautics as Air Defense identification Zones (ADIZ).

§ 620.2 *Definitions*. As used in this part the following words shall mean:

(a) *Aircraft*. Any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

(b) *Air Defense Identification Zone (ADIZ)*. Airspace of defined dimensions designated by the Administrator of Civil Aeronautics within which the ready identification, location, and control of aircraft is required in the interest of the national security.

(1) *Domestic Air Defense Identification Zone*. An air Defense Identification Zone within the United States or along an international boundary of the United States.

(2) *Coastal Air Defense Identification Zone*. An air Defense Identification Zone over the coastal waters of the United States.

(c) *Open area*. An area within the Continental United States not designated as an ADIZ or Defense Area within which the flight of aircraft is restricted by the provisions of this part, only during an Air Defense Emergency.

(d) *Defense area*. Airspace of defined dimensions designated by the Administrator of Civil Aeronautics within which the ready control of aircraft is required in the interest of the national security during an Air Defense Emergency.

(e) *Air Defense emergency*. Any state of events which indicates

to Commander in Chief, Continental Air Defense Command, or higher authority that hostile action is in progress or is imminent or is sufficiently probable as to require, in the interest of national security, the implementation of any portion of approved plans and agreements for the defense of the United States.

(f) *Appropriate aeronautical facility.* The normal communications facility with which flight plans or position reports are filed.

(g) *CAA-Airways operations facility.* A Civil Aeronautics Administration control tower, air route traffic control center, or communications station.

(h) *Flight plan.* Specified information which is filed either verbally or in writing with an appropriate aeronautical facility relative to the intended flight of an aircraft.

(i) *Foreign aircraft.* An aircraft other than a United States aircraft defined in paragraph (o) of this section.

(j) *IFR flight.* A flight conducted under the instrument flight rules of the air traffic rules of Part 60 of this title.

(k) *Operate aircraft.* The use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft.

(l) *Person.* Any individual, firm, co-partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(m) *Reporting point.* A geographical location in relation to which the position of an aircraft is reported.

(n) *United States.* The several States, the District of Columbia, and the several Territories and possessions of the United States (including areas of land or water administered by the United States under international agreement), including the Territorial waters and the overlying airspace thereof.

(o) *United States aircraft.* (1) An aircraft registered with the Administrator of Civil Aeronautics as a "civil aircraft of the United States",

(2) An aircraft of the national defense forces of the United States, or

(3) An aircraft of the Federal Government, or of a State, Territory or Possession of the United States, or the District of Columbia, or of any political subdivision thereof which has been registered with the Administrator of Civil Aeronautics.

(p) *VFR flight.* A flight conducted under the Visual Flight Rules of the air traffic rules of Part 60 of this title.

SUBPART B—OPERATING RULES

§ 620.10 *Scope.* Aircraft shall not be operated into or within and Air Defense Identification Zone (ADIZ) prescribed by the Administrator in Subpart C of this part in violation of the rules stated in this subpart.

NOTE: These Air Defense Identification Zones are depicted in CAA Flight Information Manual, Radio Facility Charts published by the Coast and Geodetic Survey, and USAF and Navy Radio Facility Charts.

§ 620.11 *Flight plans.* Unless otherwise authorized under § 620.13, prior to penetrating an ADIZ or prior to takeoff from a point within an ADIZ, a flight plan shall be filed with an appropriate aeronautical facility.

NOTE: Pilots are urged to file flight plans in person or by telephone prior to take-off. Within the Continental United States, a pilot unable to file in person may file a DVFR flight plan by placing a collect telephone call to the nearest CAA communications station or other CAA facility. (Standard procedures for making use of this service are published in the Airman's Guide and Flight Information Manual.)

(a) *IFR flights.* Unless an abbreviated flight plan is authorized by air traffic control, the flight plan shall contain the following information:

- (1) Aircraft identification, and if necessary, radio call sign;
- (2) Type of aircraft, or in the case of a formation flight, the types and number of aircraft involved;
- (3) Full name, address, and number of pilot certificate of pilot in command of the aircraft, or of the flight commander if a formation flight is involved;
- (4) Point of departure;
- (5) Cruising altitude, or altitudes, and the route to be followed;
- (6) Point of first intended landing;
- (7) Proposed true air speed at cruising altitude;
- (8) Radio transmitting and receiving frequencies to be used;
- (9) Proposed time of departure;
- (10) Estimated elapsed time until arrival over the point of first intended landing;
- (11) Alternate airport or airports;
- (12) Amount of fuel on board expressed in hours;
- (13) Any other information which the pilot in command of the aircraft, or air traffic control, deems necessary for air traffic control purposes;

(14) For international flights, the number of persons on board.

(b) *VFR flights*. Unless an abbreviated flight plan is authorized by air traffic control, the flight plan shall contain the information specified in paragraphs (a) (1) through (10) of this section. Such a flight plan shall be designated by the pilot in command as a Defense Visual Flight Rules (DVFR) flight plan.

(c) *Notification of arrival*. If a DVFR flight plan has been filed, or if an IFR flight plan has been filed for a flight for which an air traffic control clearance is not required, the pilot in command of the aircraft, upon landing or completion of the flight, shall file an arrival or completion notice with the nearest CAA communications station or control tower, unless the pilot in command states in the flight plan that no arrival notice will be filed.

NOTE: Pilots are urged to file flight plans either in person or by telephone. Flight plans filed by radio while in flight may result in interception of the aircraft to confirm its identity.

§ 620.12 *Reporting points*—(a) *Flights within or penetrating a Domestic ADIZ*. Unless otherwise authorized under § 620.13:

(1) *IFR flights*—(i) *Within control zones and areas*. Position reports shall be made as required by the Instrument Flight Rules of Part 60 of this title.

(ii) *Outside control zones and areas*. The reporting procedures specified for DVFR flights will apply.

(2) *DVFR flights*. The pilot in command of an aircraft shall not operate an aircraft into or within an ADIZ unless the aircraft is equipped with a functioning two-way radio and shall not enter an ADIZ until:

(i) He has reported to an appropriate aeronautical facility the time, position, and altitude at which the aircraft passed the last reporting point along the flight path of the aircraft prior to penetration of an ADIZ and his estimated time over the next reporting point along the intended flight path of the aircraft; or if it is not practicable to comply with this reporting procedure.

(ii) A report which contains the estimated time, position, and altitude at which he will penetrate the ADIZ has been made to an appropriate aeronautical facility at least fifteen minutes prior to penetration.

NOTE: A pilot of an aircraft departing from an airport too close to an ADIZ boundary to reach cruising altitude before entering the ADIZ or to report an estimated time and place of penetration at least 15 minutes prior to penetration will be considered to have complied with 600.12 and 620.14.

Provided, He reports immediately after takeoff the departure

time with an estimate at the first reporting point along the flight path.

(b) *Aircraft entering the United States through a Coastal ADIZ* (1) *United States aircraft.* The reports prescribed in paragraph (a) of this section are required.

(2) *Foreign aircraft.* The pilot in command of a foreign aircraft shall not operate an aircraft into the United States without:

(i) Making position reports as prescribed for United States aircraft in subparagraph (1) of this paragraph, or

(ii) Reporting to an appropriate aeronautical facility when the aircraft is not less than one hour and not more than two hours average cruising distance via the most direct route, from the United States. Thereafter, reports shall be made as instructed by the facility receiving the original report.

NOTE: Operators of foreign aircraft who exercise the optional position reporting method described in subdivision (ii) of this subparagraph are cautioned that this procedure does not eliminate the position reporting requirements prescribed for the control of air traffic.

§ 620.13 *Authorized exceptions.* The provisions of this subpart except for § 620.17 are not applicable to the following aircraft operations:

(a) *Speeds excepted.* Aircraft operating into or within an ADIZ at true air speeds of 110 knots or less if the flight is conducted at an altitude of 1,500 feet or less above the terrain.

(b) *Altitudes excepted—*(1) *Hawaiian ADIZ.* Aircraft operating within the Hawaiian ADIZ on inter-Hawaiian Island flights on Red Civil Airway No. 87 southeast of the Island of Oahu, below seven thousand (7,000) feet MSL.

(2) *Alaskan Domestic ADIZ.* Aircraft operating within the Alaskan Domestic ADIZ on a VFR flight originating from within the Alaskan Domestic ADIZ if:

(i) The flight is confined to altitudes of 4,000 feet or less above the immediate terrain; and

(ii) The aircraft is flown no closer than 500 feet to any other aircraft.

(c) *Areas or routes excepted—*(1) *General.* Flights exempted by a CAA air route traffic control center. Such flights shall be operated in accordance with the instructions, if any, issued at the time the exemption is granted.

NOTE: Flights which may be exempted, after approval has been obtained from appropriate military commanders, are (a) flights wholly within the boundaries of an ADIZ, (b) flights not currently of significance to the air

defense system, or (c) military flights which are conducted in accordance with special procedures prescribed by appropriate military authorities.

(2) *Continental United States.* (i) A flight originating within the Eastern Defense Area which maintains an outbound track into or through the Eastern ADIZ, Northern ADIZ, Presque Isle ADIZ, or Southern Border ADIZ without penetrating the Albuquerque ADIZ, Western ADIZ, or a Coastal ADIZ.

(ii) A flight originating within the Western Defense Area which maintains an outbound track into or through the Western ADIZ, Northern ADIZ, or Southern Border ADIZ without penetrating the Albuquerque ADIZ, Eastern ADIZ, or a Coastal ADIZ.

(iii) A flight originating within the Central Open Area which maintains an outbound track into or through the Northern ADIZ or Southern Border ADIZ without penetrating the Albuquerque ADIZ, Eastern ADIZ, or Western ADIZ.

(iv) A flight originating in the Albuquerque ADIZ proceeding outbound into the Central Open Area without penetrating the Eastern or Western ADIZ: *Provided*, The route of flight passes no closer to Albuquerque or Los Alamos, New Mexico, than the point of departure.

(v) A local flight within ten (10) miles of the point of departure.

(vi) *Exception from requirement for two-way radio.* Aircraft without two-way radio may enter and operate within an ADIZ: *Provided*, That the pilot adheres to a filed DVFR flight plan which includes the route, altitude, point of penetration and estimated elapsed time to the point of penetration. Aircraft without two-way radio may operate entirely within an ADIZ: *Provided*, That the pilot adheres to a filed DVFR flight plan which includes the route and altitude within the ADIZ and he departs within five minutes of his estimated time of departure.

NOTE: The tolerances outlined in the note under § 620.14 (b) will apply to this exemption.

(3) *Hawaiian ADIZ.* Aircraft operating within the Hawaiian ADIZ over any island or within three miles of the coastline of any island.

(4) *Guam ADIZ.* Within the Guam ADIZ, the exceptions of subparagraph (1) of this paragraph may be granted by the aeronautical facility exercising security control. The instructions issued at the time authorization is granted for an intra-zone VFR flight shall include the requirement that the aircraft be equipped with a functioning two-way radio and that a listening watch be maintained on the appropriate radio frequency.

§ 620.14 *Adherence to flight plans or air traffic clearances—*(a)

IFR flights—(1) *Within control zones and areas.* No deviation shall be made from an air traffic clearance unless an amended clearance is obtained from CAA air traffic control. In case emergency authority is used to deviate from the provision of an air traffic clearance, the pilot in command shall notify air traffic control as soon as possible and, if necessary, obtain an amended clearance. However, nothing in this paragraph shall prevent a pilot, operating on an IFR traffic clearance, from notifying air traffic control that he is canceling his IFR flight plan and proceeding under VFR: *Provided*, That he is operating in VFR weather conditions when he takes such action.

NOTE: A pilot who cancels an IFR flight plan should not neglect to file a DVFR flight plan if any of the remainder of the flight will be conducted in an Air Defense Identification Zone.

(2) *Outside control zones and areas.* When a flight is conducted in accordance with IFR within or into an ADIZ where an air traffic clearance is not required by the Civil Air Regulations, no deviation from the flight plan, as filed, shall be made unless prior notification is given to an appropriate aeronautical facility.

(b) DVFR flights. No deviation shall be made from a DVFR flight plan unless firm notification is given to an appropriate aeronautical facility.

NOTE: The requirements of the air defense of the United States make it imperative that pilots adhere to their flight plans or air traffic clearances within the following time distance, and altitude tolerances. Failure to meet these requirements may jeopardize the effective identification of aircraft and thereby the national defense effort. Flights which are operated in excess of these tolerances may be subject to interception:

(a) Five minutes from an estimated time over a reporting point or point of penetration of an ADIZ; or, in the case of a flight originating within an ADIZ, five minutes from the proposed time of departure specified in the flight plan, unless the actual time of departure is reported to the appropriate aeronautical facility.

(b) Ten miles from the centerline of the route of flight if the flight is entering or operating within a Domestic ADIZ or 20 miles from the centerline of the route of flight if the flight is entering or operating within a Coastal ADIZ.

(c) A pilot in command of an aircraft when on a DVFR flight plan or an IFR flight plan for which air traffic clearance is not required should not deviate from the cruising altitude specified in the flight plan unless prior notification is given to an appropriate aeronautical facility, except that he may begin descent from the altitude specified in the flight plan within reasonable distance of destination without reporting change of altitude.

§ 620.15 *Emergency situations.* In emergency situations which require immediate decision and action for the safety of the flight, the pilot in command of the aircraft may deviate from the provisions of this part to the extent required for such emergency. When

a deviation is exercised, the pilot in command shall report such deviation and the reasons therefor, as soon as practicable to an appropriate aeronautical facility.

§ 620.16 *Radio failure*—(a) *IFR flights*. If unable to maintain two-way radio communications, the pilot in command of the aircraft shall:

(1) If operating under VFR conditions, proceed under VFR and land as soon as practicable, or

(2) Proceed according to the latest air traffic clearance to the radio facility serving the airport of intended landing, maintaining the minimum safe altitude or the last acknowledged assigned altitude whichever is higher. Descent shall start at the expected approach time last authorized or, if not received and acknowledged, at the estimated time of arrival indicated by the elapsed time specified in the flight plan.

NOTE: Detailed procedures to be followed by the pilot are contained in the CAA Flight Information Manual, for sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.

(b) *DVFR flights*. In case of the failure of two-way radio communications the flight may proceed in accordance with the original DVFR flight plan, and the pilot in command of the aircraft shall make a report of such failure, as soon as possible, to an appropriate aeronautical facility.

§ 620.17 *Air Defense security instructions*. Under emergency air defense conditions which may involve the national security, aircraft shall be operated into or within an ADIZ in accordance with such additional special security instructions as may be issued by the Administrator. Such instructions will be consistent with the provisions of the "Plan for the Security Control of Air Traffic During a Military Emergency," as approved 15 July 1952, or as subsequently amended.

§ 620.18 *Violations*. In addition to the penalties otherwise provided for by the Civil Aeronautics Act of 1938, as amended, any person who knowingly or wilfully violates any provision prescribed in this part, or any order issued thereunder shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine of not exceeding \$10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment.

SUBPART C—DESIGNATED AIR DEFENSE IDENTIFICATION ZONES AND DEFENSE AREAS

§ 620.20 *General*. Airspace above the following described areas is established by the Administrator of Civil Aeronautics as

Domestic or Coastal Air Defense Identification Zones of Defense Areas.

§ 620.21 *Domestic ADIZ's*—(a) *Northern (Domestic) ADIZ*. The area bounded by a line 48°29'38" N., 124°43'35" W., eastward along U. S.-Canadian Border to 47°10' N., 85°31' W.; 46°51' N., 94°00' W.; 47°10' N., 96°17' W.; 48°00' N., 99°00' W.; to 48°00' N., 125°15' W.; 48°29'38" N., 124°43'35" W. (point of beginning).

(b) *Presque Isle (Domestic) ADIZ*. The area bounded by a line 46°00' N., 69°36' W.; 46°00' N., 70°18' W.; northward and eastward along U. S.-Canadian Border to 44°46'36" N., 66°54'11" W.; 44°30' N., 67°07' W.; 44°19' N., 67°53' W.; 46°00' N., 69°36' W. (point of beginning).

(c) *Eastern (Domestic) ADIZ*. The area bounded by a line 46°51' N., 94°00' W.; 42°00' N., 96°45' W.; 39°20' N., 95°10' W.; 38°23' N., 95°08' W.; 37°30' N., 94°15' W.; 37°30' N., 92°00' W.; 36°00' N., 87°15' W.; 35°45' N., 86°30' W.; 35°00' N., 85°30' W.; 33°30' N., 84°50' W.; 30°50' N., 82°20' W.; 30°50' N., 80°54' W.; 30°05' N., 81°07' W.; 28°45' N., 80°00' W.; 27°30' N., 82°56' W.; 27°47' N., 83°08' W.; 28°45' N., 82°57' W.; 29°50' N., 84°00' W.; 30°10' N., 83°30' W.; 31°45' N., 84°00' W.; 34°55' N., 87°50' W.; 35°15' N., 89°08' W.; 35°40' N., 91°15' W.; 36°00' N., 93°20' W.; 36°00' N., 95°15' W.; 41°30' N., 98°00' W.; 43°50' N., 98°00' W.; 47°10' N., 96°17' W.; 46°51' N., 94°00' W. (point of beginning).

(d) *Albuquerque (Domestic) ADIZ*. The area bounded by a line 37°02' N., 110°52' W.; 38°45' N., 108°30' W., 38°14' N., 104°50' W.; 37°15' N., 104°30' W.; 37°15' N., 104°14' W.; 35°10' N., 104°00' W.; 34°00' N., 104°00' W.; 33°00' N., 105°30' W.; 33°00' N., 107°30' W.; 34°00' N., 110°50' W.; 35°00' N., 110°50' W.; 37°02' N., 110°52' W. (point of beginning).

(e) *Western (Domestic) ADIZ*. The area bounded by a line 48°00' N., 117°00' W.; 48°00' N., 115°00' W.; 46°30' N., 115°00' W.; 44°45' N., 117°15' W.; 38°00' N., 117°00' W.; 36°00' N., 113°32' W.; 32°10' N., 113°45' W.; westward along U. S.-Mexican Border to 32°43' N., 114°45' W.; 33°08' N., 114°55' W.; 33°30' N., 115°15' W.; 34°30' N., 116°00' W.; 35°31' N., 116°22' W.; 36°00' N., 117°05' W.; 36°00' N., 118°48' W.; 39°15' N., 121°00' W.; 44°15' N., 121°00' W.; 45°20' N., 118°15' W.; 48°00' N., 117°00' W. (point of beginning).

(f) *Southern Border (Domestic) ADIZ*. A line extending from 32°16' N., 117°08' W.; 32°30' N., 117°20' W.; 32°32'03" N., 117°07'25" W.; eastward along the U. S.-Mexican Border to 25°58' N., 97°07' W.

(g) *Alaskan (Domestic) ADIZ*. The area bounded by a line 69°50' N., 141°00' W.; 60°18' N., 141°00' W.; easterly along the

International Boundary line to 60°20' N., 139°30' W.; 59°30' N., 139°30' W.; 59°28' N., 146°18' W.; 56°34' N., 154°10' W.; 58°39' N., 162°03' W.; 63°17' N., 168°42' W.; 63°53' N., 166°16' W.; 71°18' N., 156°44' W.; 69°50' N., 141° 00' W. (point of beginning).

§ 620.22 *Coastal ADIZ's*—(a) *Pacific (Coastal) ADIZ*. The area bounded by a line 48°29'38" N., 124°43'35" W.; 48°00' N., 125°15' W.; 46°15' N., 124°30' W.; 43°00' N., 124°40' W.; 40°00' N., 124°35' W.; 38°50' N., 124°00' W.; 34°50' N., 121°10' W.; 34°00' N., 120°30' W.; 32°16' N., 118°25' W.; 32°16' N., 117°08' W.; along line parallel to and approximately 12 miles from the Mexican Coast to 29°00' N., 114°51' W.; 28°00' N., 123°10' W.; 37°42' N., 130°40' W.; 48°30' N., 132°10' W.; 48°30' N., 125°00' W.; 48°29'38" N., 124°43'35" W. (point of beginning).

(b) *Atlantic (Coastal) ADIZ*. The area bounded by a line 44°30' N., 66°45' W.; 43°00' N., 65°47' W.; 39°30' N., 63°45' W.; 30°45' N., 74°00' W.; 28°45' N., 80°00' W.; 30°05' N., 81°07' W.; 30°50' N., 80°54' W.; 32°01' N., 80°32' W.; 35°10' N., 75°10' W.; 36°10' N., 75°10' W.; 37°00' N., 75°30' W.; 39°30' N., 73°45' W.; 40°15' N., 73°15' W.; 41°15' N., 69°30' W.; 42°00' N., 69°30' W.; 42° 40' N., 70°10' W.; 43°10' N., 70°00' W.; 44°19' N., 67°53' W.; 44°30' N., 67°07' W.; 44°30' N., 66°45' W. (point of beginning).

(c) *Hawaiian (Coastal) ADIZ*. The area bounded by a line 24°15' N., 158°00' W.; 22°30' N., 155°30' W.; 19°45' N., 153°30' W.; 19°00' N., 155°00' W.; 18°15' N., 158°00' W.; 20°00' N., 161° 00' W.; 22°30' N., 161°00' W.; 24°15' N., 158°00' W. (point of beginning).

(d) *Guam (Coastal) ADIZ*. The area bounded by a circle with a radius of 200 nautical miles centered at the Guam Radio Range Station. (Latitude 13°32'41" N., Longitude 144°50'30" E.)

(e) *Alaskan (Coastal) ADIZ*. The area bounded by a line 73°00' N., 141°00' W.; 69°50' N., 141°00' W.; 71°18' N., 156°44' W.; 68°53' N., 166°16' W.; 63°17' N., 168°42' W.; 58°39' N., 162°03' W.; 56°34' N., 154°10' W.; 59°28' N., 146°18' W.; 59°30' N., 139°30' W.; 57°00' N., 139°30' W.; 52°00' N., 153°00' W.; 53°54' N., 166°31' W.; 61°45' N., 177°00' W.; 65°00' N., 169°00' W.; 73°00' N., 169°00' W.; 73°00' N., 141°00' W. (point of beginning).

§ 620.23 *Defense areas*—(a) *Eastern Defense Area*. The area bounded by a line 46°51' N., 94°00' W.; 47°10' N., 85°31' W.; eastward along the U. S.-Canadian Border to 46°00' N., 70°18' W.; 46°00' N., 69°36' W.; 44°19' N., 67°53' W.; 43°10' N., 70°00' W.; 42°40' N., 70°10' W.; 42°00' N., 69°30' W.; 41°15' N., 69°30' W.; 40°15' N., 73°15' W.; 39°30' N., 73°45' W.; 37°00' N., 75°30' W.; 36°10' N., 75°10' W.; 35°10' N., 75°10' W.; 32°01' N., 80°32'

W.; 30°50' N., 80°54' W.; 30°50' N., 82°20' W.; 33°30' N., 84°50' W.; 35°00' N., 85°30' W.; 35°45' N., 86°30' W.; 36°00' N., 87°15' W.; 37°30' N., 92°00' W.; 37°30' N., 94°15' W.; 38°23' N., 95°08' W.; 39°20' N., 95°10' W.; 42°00' N., 96°45' W.; 46°51' N., 94°00' W. (point of beginning).

(b) *Western Defense Area.* The area bounded by a line 48°00' N., 125°15' W.; 48°00' N., 117°00' W.; 45°20' N., 118°15' W.; 44°15' N., 121°00' W.; 39°15' N., 121°00' W.; 36°00' N., 118°48' W.; 36°00' N., 117°05' W.; 35°31' N., 116°22' W.; 34°30' N., 116°00' W.; 33°30' N., 115°15' W.; 33°08' N., 114°55' W.; 32°43' N., 114°45' W.; westward along U. S.-Mexican Border to 32°32'03" N., 117°07'25" W.; 32°30' N., 117°20' W.; 32°16' N., 117°08' W.; 32°16' N., 118°25' W.; 34°00' N., 120°30' W.; 34°50' N., 121°10' W.; 38°50' N., 124°00' W.; 40°00' N., 124°35' W.; 43°00' N., 124°40' W.; 46°15' N., 124°30' W.; 48°00' N., 125°15' W. (point of beginning).

NOTE: Unless specifically stated otherwise, the lines between points herein described are great circles except those lines between adjacent points on the same parallel of latitude. In this latter case, the lines are rhumb lines.

This part shall become effective 0001 e. s. t. December 1, 1955.

3. Interpretative Letter

DEPARTMENT OF COMMERCE CIVIL AERONAUTICS ADMINISTRATION WASHINGTON 25, D.C.

December 31, 1954

Major J. I. Posner, USAF, 22846A
AFROTC Detachment #540
Columbia University
New York 27, New York

Dear Major Posner:

Reference is made to your inquiry of December 11, 1954, concerning application of Regulations of the Administrator, Part 620, to foreign aircraft passing through a designated coastal ADIZ outside the territorial air space of the United States.

The wording of Section 620.12(b) (2) was clarified when Part 620 was revised, effective January 15, 1953; however, the intent of this section remains the same as contained in Part 620 effective December 27, 1950. Foreign aircraft operating in a coastal ADIZ are required to comply with the regulation only if they are entering the United States, i.e., a foreign aircraft en route from Havana to Halifax might conceivably fly through the Atlantic ADIZ without being subject to any Part 620 restriction. It should be noted

that the departure point has no bearing on the applicability of the regulation.

Very truly yours,
(Signed) D. D. THOMAS
Acting Director
Office of Federal Airways.

B. Canadian Air Defense Identification Zone

1. NOTE. Canadian Department of Transport NOTAM No. 22 /55, Rules for the Security Control of Air Traffic, the latest revision of the Canadian Air Defense Identification Zone Regulations, became effective December 1, 1955. The Regulations were furnished to the Editor by the United States Embassy at Ottawa. The accompanying letter, of 22 August 1956, stated: "The Superintendent of Air Regulations, in providing these rules, advised us that they are in NOTAM form only and are not as yet subject to statutory support through the medium of an order-in-council, or otherwise." For discussion of the earlier version of the Rules, see Martial, cited in A, 1, *supra*. See, also, Murchison, *Ibid*.

2. Rules for the Security Control of Air Traffic

NOTAM

22/55

23 NOV.

CANADA DEPARTMENT OF TRANSPORT AIR SERVICES BRANCH

22/55 RULES FOR THE SECURITY CONTROL OF AIR TRAFFIC

(Superseding NOTAM 22/54)

Effective—1st December, 1955

1. The attached Rules for the Security Control of Air Traffic contain a number of revisions to the rules issued previously. The more important changes are:

(a) An increase of the CADIZ area over Northeast Canada.

(b) The introduction of new coastal CADIZs to provide protection upwards from the surface of the ocean.

(c) The lowering of the effective altitude from 4,000 feet above ground to 3,000 feet above ground, within which CADIZ procedures shall apply.

(d) The relocation 81 miles northward of the Security Identification Zone (SIZ).

(e) The increase of the free flying area south of the Security Identification Zone.

(Signed) R. DODDS
for (A. de Niverville),
Director of Air Services.

CANADIAN AIR DEFENSE IDENTIFICATION ZONES AND SECURITY IDENTIFICATION ZONES

DECEMBER, 1955

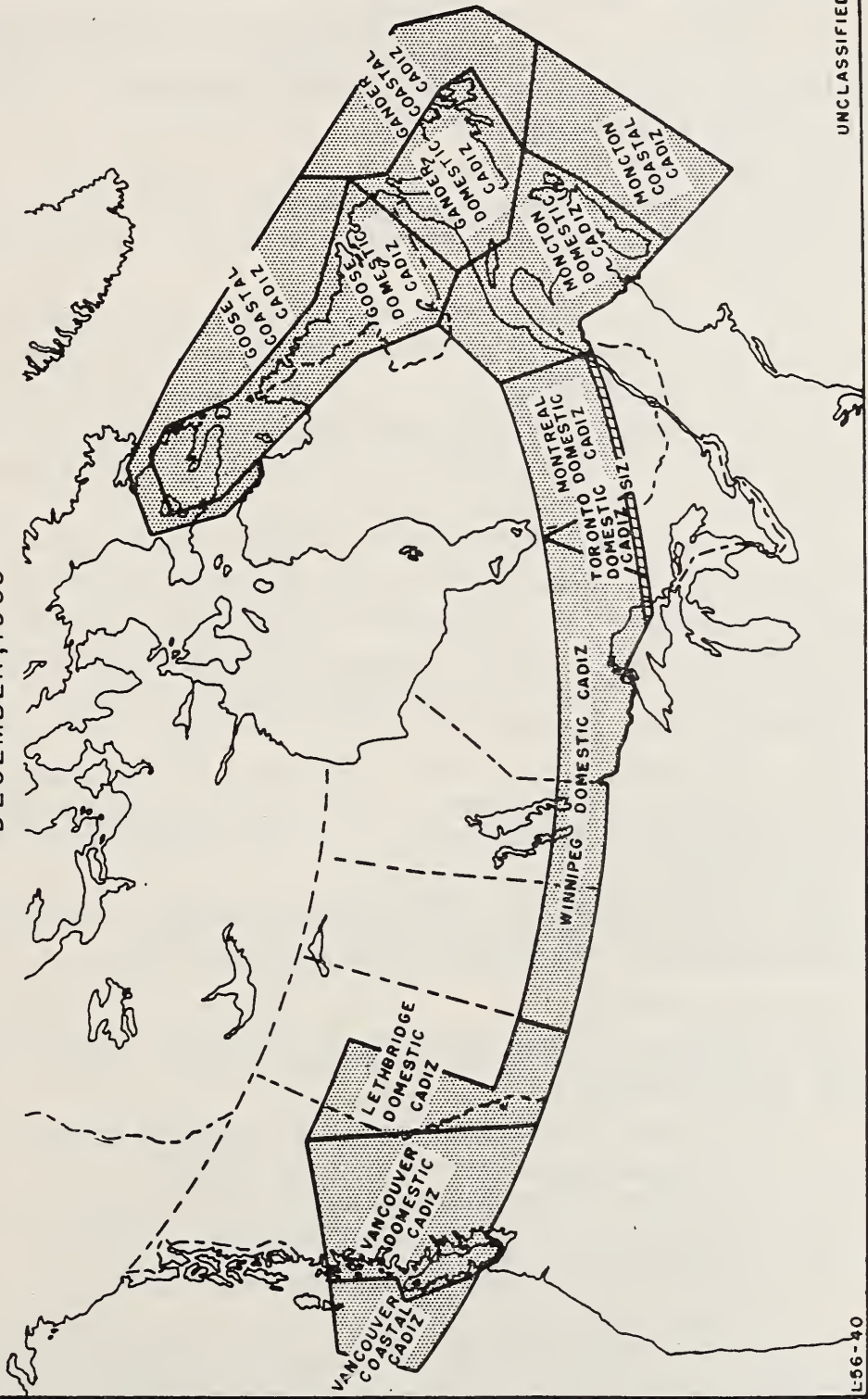


Figure 5.

RULES FOR THE SECURITY CONTROL OF AIR TRAFFIC

1. INTRODUCTION

1.1. Purpose—The rules contained herein have been found necessary, in the interest of national security, to identify, locate and control aircraft operated within areas designated as Canadian Air Defense Identification Zones.

1.2. Definitions.—

1.2.1. Appropriate Aeronautical Facility—The normal communications facility with which flight plans, arrival reports or position reports are filed.

1.2.2. Canadian Air Defense Identification ZONE (CADIZ)—An airspace of defined dimensions extending upwards from the surface and designated by the Department of Transport. Domestic CADIZs are, in general, designated over areas lying within the continental limits of Canada. Coastal CADIZ's are in general, designated over the coastal waters of Canada.

1.2.3. Security Identification Zone (SIZ)—An airspace of defined dimensions, designated by the Department of Transport, extending upwards from the surface of the earth to an altitude of 3000 feet above the immediate terrain, through which southbound flights must be conducted in accordance with certain rules designed to facilitate ready identification of the aircraft.

NOTE: The Canadian Air Defense Identification Zones and the Security Identification Zone are designated in the Designated Airspace Handbook, and are depicted in the Canada Air Pilot, R. C. A. F. radio facility charts and the attached map.

1.2.4. DVFR Flight—A VFR flight conducted in accordance with the Rules for the Security Control of Air Traffic.

2. OPERATING RULES

2.1. *Application*—The rules contained in this document shall apply only to aircraft:

- (a) At or above 3000 feet above the immediate terrain, which are operating within a Domestic CADIZ;
- (b) At or above 3000 feet above the immediate terrain, which are about to enter a Domestic CADIZ;
- (c) At any altitude which are operating within or are about to enter a coastal CADIZ;
- (d) At any altitude which will operate through the Security Identification Zone in a southerly direction. (091° T through 269° T).

2.2. *Equipment*—Any aircraft which is operated in accordance with 2.1 shall be equipped with functioning two-way radio, which

will permit the pilot to communicate with an appropriate aeronautical facility.

2.3. *Flight Plans*—A flight plan shall be filed for any flight with an appropriate aeronautical facility.

- (a) Prior to penetrating a CADIZ, or
- (b) Prior to take-off from a point within a CADIZ, or
- (c) At least 15 minutes prior to entering the SIZ southbound.

2.3.1. *IFR Flights*—Unless an abbreviated flight plan is authorized by Air Traffic Control, the flight plan shall contain the following information:

- (a) Aircraft identification
- (b) Type of aircraft
- (c) Point of departure
- (d) Flight altitude and route to be followed
- (e) Point of first intended landing
- (f) Time of departure
- (g) True airspeed
- (h) Estimated elapsed time
- (i) Alternate airport
- (j) Radio frequencies
- (k) Approach aids to be used
- (l) Number of persons on board
- (m) Pilot's name
- (n) Fuel
- (o) Remarks.

2.3.2. *VFR Flights*—Unless an abbreviated flight plan is authorized by Air Traffic Control, the flight plan shall contain the information specified in 2.3.1., except items (i), (k), (l) and (n). Such a flight plan shall be designated by the pilot as a Defense Visual Flight Rule (DVFR) flight plan.

- NOTES:
1. Pilots of aircraft which are operated below 3000 feet above the immediate terrain within the lateral boundaries of a CADIZ are urged to comply with the flight plan requirements of 2.3.
 2. Pilots are urged to file a flight plan either in person or by telephone. Flight plans filed by radio while in flight (AIRFILE) may result in interception of the aircraft to confirm its identity.
 3. In completing a DVFR flight plan, the abbreviation "DVFR" shall be inserted immediately preceding item (d) in 2.3.1.

2.4. *Notification of Arrival*—If a DVFR flight plan has been filed, or an IFR flight plan has been filed for a flight for which an air traffic control clearance is not required, the pilot, upon landing, or upon completion of the flight, shall file an arrival report with the appropriate aeronautical facility, unless the pilot states in the flight plan that no arrival report will be filed.

2.5. Position Reports—Flights operated within a CADIZ or which are about to penetrate a CADIZ or which will operate through the SIZ, southbound, shall conform to the position reporting procedures contained herein.

2.5.1. IFR Flights

- (a) Within controlled airspace—Position reports shall be made as required by the Instrument Flight Rules, and in addition, when penetrating a coastal CADIZ towards Canada.
- (b) Outside controlled airspace—Position reports shall be made as required for DVFR flights in paragraph 2.5.2.

2.5.2. DVFR Flights

- (a) Penetrating a CADIZ—No aircraft shall be operated into a CADIZ unless:
 - (i) The pilot has reported to an appropriate aeronautical facility the time, position and altitude at which the aircraft passed the last reporting point along the flight path of the aircraft prior to penetration of the CADIZ, and his estimated time over the next reporting point along the intended flight path of the aircraft, or, if it is not practicable to comply with this procedure;
 - (ii) A report which contains the estimated time, position and altitude at which the aircraft will penetrate the CADIZ has been made to an appropriate aeronautical facility, approximately 15 minutes prior to penetration.

(b) Operating within a CADIZ—No position report is required, except as in 2.5.3.

(c) Leaving a CADIZ—No position report is required.

2.5.3. Operating Through the SIZ Southbound—No aircraft shall be operated through the SIZ in a southerly direction, (091° T through 269° T), unless:

- (a) The pilot has reported, to an appropriate aeronautical facility, the time, position and altitude at which the aircraft passed the last reporting point along the flight path of the aircraft prior to entering the SIZ, and the estimated time over the next reporting point along the intended flight path of the aircraft or, if it is not practicable to comply with this procedure;
- (b) A report which contains the estimated time, position and altitude at which the aircraft will enter the SIZ has been made to an appropriate aeronautical facility, approximately 15 minutes prior to penetration.

2.6 Adherence to Flight Plans or Air Traffic Clearances

2.6.1 IFR Flights

- (a) Within controlled airspace—No deviation shall be made from an air traffic clearance unless an amended clearance is obtained from Air Traffic Control. In case emergency authority is used to deviate from the provisions of an air traffic clearance, the pilot shall notify Air Traffic Control as soon as possible and, if necessary, obtain an amended clearance. However, nothing in this paragraph shall prevent a pilot, operating on an IFR clearance, from notifying Air Traffic Control that he is cancelling his IFR flight plan and is proceeding in accordance with the Visual Flight Rules, *provided* that he is operating in VFR weather conditions when he takes such action.

NOTE: A pilot who cancels his IFR flight plan shall file a DVFR flight plan if any of the remainder of the flight will be a DVFR flight.

- (b) Outside controlled airspace—When an IFR flight is conducted within or into any portion of a CADIZ where an air traffic clearance is not required by The Air Regulations, no deviation from the flight plan shall be made unless prior notification is given to an appropriate aeronautical facility.

2.6.2 DVFR Flights—No deviation shall be made from a DVFR flight plan, unless:

- (a) Prior notification is given to an appropriate aeronautical facility, or
- (b) Such deviation is required to comply with the Visual Flight Rules, in which case, such deviation shall be reported to an appropriate aeronautical facility as soon as possible.

2.6.3 Tolerances—Whenever it shall appear that the flight will not be within the following tolerances, the appropriate aeronautical facility shall be advised:

- (a) Time Tolerance

5 minutes from an estimated time over any of the following:

- (i) A reporting point,
- (ii) A point of penetration of a CADIZ,
- (iii) A point of penetration of the SIZ, or
- (iv) The airport of destination, within a CADIZ.

- (b) Distance Tolerance—10 miles from the centreline of the route of flight indicated in the flight plan.

2.7 Emergency Situations—In emergency situations which require immediate action for the safety of the flight, the pilot may

deviate from the provisions of these rules to the extent required for such emergency. When such a deviation is made, the pilot shall report the deviation and the reasons therefor, as soon as practicable, to an appropriate aeronautical facility.

2.8 Radio Failure

2.8.1 IFR Flights—If unable to maintain two-way radio communications, the pilot of an IFR flight shall follow the procedure specified in Air Navigation Order No. 5, Series V.

2.8.2 DVFR Flights—If unable to maintain two-way radio communications, the pilot of a DVFR flight:

- (a) May proceed in accordance with the current DVFR flight plan, or
- (b) Shall land at a suitable airport along the route of flight specified in the flight plan, and the pilot shall report such radio failure as soon as possible to an aeronautical facility.

2.9 Alternative Procedure

2.9.1 Where it would not be possible to comply with the rules contained herein as they apply to the Security Identification Zone, the pilot of an aircraft proposing a flight in a southerly direction (091° T through 269° T) through the Security Identification Zone shall, immediately upon entering the SIZ, maintain a track between 170° True and 190° True for at least 5 minutes at an indicated airspeed not exceeding 100 knots.

2.9.1.1 When a southbound (091° T through 269° T) flight originates from within the Security Identification Zone, the procedure specified in 2.9.1 shall be complied with as soon as the cruising altitude has been reached.

2.10 Violations

2.10.1 A violation of these rules will render the pilot of an aircraft liable to inflight interception by military interceptor aircraft.

2.11 Designation of CADIZs

2.11.1 The following described areas are designated as CADIZs

Goose Coastal CADIZ—The area bounded by a line $61^{\circ}00'N$, $69^{\circ}20'W$; $61^{\circ}00'N$, $70^{\circ}40'W$; $63^{\circ}00'N$, $73^{\circ}00'W$; $66^{\circ}00'N$, $73^{\circ}00'W$; $66^{\circ}00'N$, $66^{\circ}00'W$; $63^{\circ}00'N$, $60^{\circ}00'W$; $54^{\circ}30'N$, $52^{\circ}00'W$; $53^{\circ}00'N$, $54^{\circ}00'W$; $56^{\circ}30'N$, $60^{\circ}00'W$; $61^{\circ}00'N$, $64^{\circ}00'W$; $64^{\circ}00'N$, $64^{\circ}00'W$; $65^{\circ}00'N$, $66^{\circ}00'W$; $65^{\circ}00'N$, $71^{\circ}30'W$; $63^{\circ}00'N$, $71^{\circ}30'W$; to $61^{\circ}00'N$, $69^{\circ}20'W$, the point of beginning.

Goose Domestic CADIZ—The area bounded by a line $61^{\circ}00'N$, $69^{\circ}20'W$; $63^{\circ}00'N$, $71^{\circ}30'W$; $65^{\circ}00'N$, $71^{\circ}30'W$; $65^{\circ}00'N$, $66^{\circ}00'W$; $64^{\circ}00'N$, $64^{\circ}00'W$; $61^{\circ}00'N$, $64^{\circ}00'W$; $56^{\circ}30'N$, $60^{\circ}00'W$; $53^{\circ}00'N$, $54^{\circ}00'W$; $51^{\circ}00'N$, $62^{\circ}30'W$; $52^{\circ}30'N$,

65°00'W; 56°00'N, 65°00'W; to 61°00'N, 69°20'W, the point of beginning.

Gander Coastal CADIZ—The area bounded by a line 54°30'N, 52°00'W; 48°00'N, 48°00'W; 45°00'N, 50°00'W; 43°50'N, 53°15'W; 46°30'N, 58°00'W; 46°30'N, 52°30'W; 48°00'N, 52°30'W; 51°30'N, 55°00'W; 53°00'N, 54°00'W to 54°30'N, 52°00'W, the point of beginning.

Gander Domestic CADIZ—The area bounded by a line 53°00'N, 54°00'W; 51°30'N, 55°00'W; 48°00'N, 52°30'W; 46°30'N, 52°30'W; 46°30'N, 58°00'W; 48°30'N, 62°00'W; 51°00'N, 62°30'W, to 53°00'N, 54°00'W, the point of beginning.

Moncton Domestic CADIZ—The area bounded by a line 52°30'N, 65°00'W; 51°00'N, 62°30'W; 48°30'N, 62°00'W; 46°30'N, 58°00'W; 45°00'N, 61°00'W; 43°00'N, 65°48'W; 44°30'N, 66°45'W; 44°30'N, 67°07'W; 44°46'36"N, 66°54'11"W; along U.S.-Canada Boundary to 47°10'N, 69°32'W; 47°10'N, 70°00'W; 51°00'N, 70°00'W; 52°30'N, 65°00'W, the point of beginning.

Moncton Coastal CADIZ—The area bounded by a line 46°30'N, 58°00'W; 43°50'N, 53°15'W; 39°30'N, 63°45'W; 43°00'N, 65°48'W; 45°00'N, 61°00'W; 46°30'N, 58°00'W, the point of beginning.

Montreal Domestic CADIZ—The area bounded by a line 51°00'N, 70°00'W; 47°10'N, 70°00'W; 47°10'N, 78°20'W; 51°00'N, 80°00'W; 51°00'N, 70°00'W, the point of beginning.

Toronto Domestic CADIZ—The area bounded by a line 51°00'N, 80°00'W; 47°10'N, 78°20'W; 47°10'N, 83°12'W; 51°00'N, 80°00'W; the point of beginning.

Winnipeg Domestic CADIZ—The area bounded by a line 51°00'N, 80°00'W; 47°10'N, 83°12'W; 47°10'N, 85°31'W, thence along the U.S.-Canada Boundary to 49°00'N, 110°00'W; 51°00'N, 110°00'W; 51°00'N, 80°00'W, the point of beginning.

Lethbridge Domestic CADIZ—The area bounded by a line 57°00'N, 115°00'W; 51°00'N, 115°00'W; 51°00'N, 110°00'W; 49°00'N, 110°00'W; 49°00'N, 116°00'W; 57°00'N, 123°00'W; 57°00'N, 115°00'W, the point of beginning.

Vancouver Domestic CADIZ—The area bounded by a line 48°30'N, 125°00'W; 50°30'N, 129°00'W; 51°15'N, 128°00'W; 53°28'N, 130°35'W; 57°00'N, 123°00'W; 49°00'N, 116°00'W, along U.S.-Canada Boundary to

48°29'38"N, 124°43'35"W; 48°30'N, 125°00'W; the point of beginning.

Vancouver Coastal CADIZ—The area bounded by a line 48°30'N, 125°00'W; 48°30'N, 132°10'W; 51°30'N, 134°00'W; 53°28'N, 130°35'W; 51°15'N, 128°00'W; 50°30'N, 129°00'W; 48°30'N, 125°00'W, the point of beginning.

2.12 Designation of the Security Identification Zone

2.12.1 The following area is designated as the Security Identification Zone

The area bounded by a line 47°25'N, 69°16'W, along the U.S.-Canada Boundary to 47°10'N, 69°32'W; 47°10'N, 85°31'W, along the U.S.-Canada Boundary to 47°30'N, 86°19'W; 47°30'N, 70°00'W; 47°25'N, 69°16'W, the point of beginning.

SECTION II

UNITED STATES AIR AND SEA REGULATIONS

SECTION II

UNITED STATES AIR AND SEA REGULATIONS

A. Defensive Sea Areas

1. NOTE. By an Act of June 25, 1948, Section 44 of the Criminal Code, as amended, was revised and reenacted as Section 2152 of Title 18 of the United States Code.

Section 2152 provides, in part, that:

“Whoever . . . violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President for purposes of national defense, may from time to time establish by executive order. . . .” [shall be punished].

This Section is likewise made applicable to the Canal Zone.

In 1917 and 1918, thirty-three defensive sea areas were established by executive order. The texts of these orders are reprinted in the N.W.C., *I.L. Documents*, 1917, pp. 233, 240, 241; 1918, p. 164. Regulations governing the defensive sea areas created in 1917 are found in the N.W.C., *I.L. Documents*, 1917, p. 237; *Ibid.* 1943, p. 66; noted, *Ibid.* 1948-49, p. 157. By an executive order of 25 January 1919, these defensive sea areas were discontinued.

Since 1918, thirty-seven defensive sea areas, or as sometimes called “naval defensive sea areas,” have been established. Excerpts from these executive orders are reproduced in N.W.C., *I.L. Documents*, 1948-49, pp. 158-168. All except three of the areas were created during the early years of World War II, 1940 through 1942. One defensive sea area, Whittier, Alaska, was established as recently as 1952, by Executive Order No. 10361, of 11 June 1952, 17 F.R. 5357.

Twenty-one of these defensive sea areas located within the continental United States and the Philippine Islands were discontinued by five executive orders in 1945, 1946, 1947 and 1952.

Defensive sea areas, unlike maritime control areas, have generally been limited to the territorial waters of the United States, and have been established both in war and in time of peace as security measures. Regulations governing defensive sea areas, in general, were promulgated in Executive Order No. 8978, of 16 December 1941, 6 F.R. 6469, and Executive Order No. 9275 of 23 November 1942, 7 F.R. 9767. At present there are sixteen defensive sea areas in force, which are listed below. With the exception of an area off the coast of North Carolina, they are all outside the continental limits of the United States. All of the areas are under the control of the Secretary of the Navy, excluding the Whittier Defensive Sea Area, which is under control of the Secretary of Defense.

The limits applied by other countries for security and defensive purposes

are compiled in the International Law Commission's *Second Report on the Regime of the Territorial Sea*, A/CN.4/61, pp. 11-17.

2. Areas Currently in Force

- a. Defensive Sea Area off the Coast of North Carolina
[Executive Order No. 5786, 30 January 1932; *Laws Relating to the Navy* (1945), p. 1883.]
- b. Pearl Harbor Defensive Sea Area
[Executive Order No. 8143, 26 May 1939, 4 F.R. 2179.]
- c. Kiska Island and Unalaska Island Defensive Sea Areas
(These two separate defensive sea areas were established by the same executive order.)
[Executive Order No. 8680, 14 February 1941, 6 F.R. 1014; corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- d. Kaneohe Bay Naval Defensive Sea Area
[Executive Order No. 8681, 14 February 1941, 6 F.R. 1014.]
- e. Palmyra Island, Johnston Island, Midway Island, Wake Island, and Kingman Reef Naval Defensive Sea Areas (These five separate defensive sea areas were established by the same executive order.)
[Executive Order No. 8682, 14 February 1941, 6 F.R. 1014; corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- f. Guam Island, Rose Island and Tutuila Island Naval Defensive Sea Areas
[Executive Order No. 8683, 14 February 1941, 6 F.R. 1015; corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Rose Island and Tutuila Island by No. 10341, 8 April 1952, 17 F.R. 3143.]
- g. Culebra Island Naval Defensive Sea Area
[Executive Order No. 8684, 14 February 1941, 6 F.R. 1016.]
- h. Kodiak Island Naval Defensive Sea Area
[Executive Order No. 8717, 22 March 1941, 6 F.R. 1621.]
- i. Guantanamo Bay Naval Defensive Sea Area
[Executive Order No. 8749, 1 May 1941, 6 F.R. 2252.]
- j. Honolulu Defensive Sea Area
[Executive Order No. 8987, 20 December 1941, 6 F.R. 6675.]
- k. Whittier Defensive Sea Area
[Executive Order No. 10361, 11 June 1952, 17 F.R. 5357.]

B. Airspace Reservations

1. NOTE. The authority to create airspace reservations was granted to the President nine years after the inception of the defensive sea areas. Section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174)

empowered the President to establish by executive order airspace reservations in the United States for the purpose of national defense, and also in the District of Columbia for the purpose of public safety.

Airspace reservations, in general, prohibit all aircraft, other than public aircraft of the United States, from navigating within these areas unless authorized by the controlling department or agency. Similar to defensive sea areas, airspace reservations have been created over the territorial waters of the United States, both within and outside the continental United States. In fact, at times, both defensive sea areas and airspace reservations have been created over the same areas by a single executive order. They have also been established over portions of the District of Columbia and certain Atomic Energy Commission facilities in the interior of the United States. One airspace reservation, unrelated to public safety or defensive purpose, was established over the Superior National Forest in Minnesota in 1949 in order to maintain that area as a natural forest preserve. Executive Order No. 10092, December 17, 1949, 14 F.R. 7637. This airspace is under the control of the Secretary of Agriculture. In *Perko v. U.S.* the court declared Executive Order No. 10092 establishing the Superior National Forest Airspace Reservation valid and upheld the constitutionality of the airspace reservation. *U.S. v. Perko* (1952), D.C. Minn., 108 Federal Supplement 315, affirmed *Perko v. U.S.*, 204 Federal Reporter, Second, 446, *certiorari* denied 74 Supreme Court Reporter 48, 346 U.S. 832.

The first military airspace reservation was set up in 1929 over the Canal Zone. From 1929 through 1942 fifty-two such areas were established within and outside of the continental United States. N.W.C., *I.L. Documents, 1948-49*, pp. 199-206. Thirty-three of these airspace reservations have been discontinued, as of August 1956. Since 1942 five airspace reservations over certain Atomic Energy Commission facilities have been created by three executive orders in 1948 and 1951.

Twenty-four airspace reservations are now in force, and are under the control of one of the following: the Secretary of the Navy, the Civil Aeronautics Administration, the Atomic Energy Commission, and the Secretary of Agriculture. Information concerning these areas is given below.

2. Reservations Currently in Force

a. Airspace Reservation over the Canal Zone.

[Executive Order No. 5047, 18 February 1929; superseded by No. 8251, 12 September 1939, 4 F.R. 3899; amended by No. 8271, 16 October 1939, 4 F.R. 4277; superseded by Canal Zone Order No. 3, 21 January 1947, 12 F.R. 898.]

b. Airspace Reservations over Harbors closed to Foreign Vessels.

[Executive Order No. 5281, 17 February 1930; amended as to Tortugas, Florida, by Proclamation 2112, 4 January 1935; superseded as to Subic Bay by No. 8718, 22 March 1941; discontinued as to Subic Bay by No. 9720, 8 May 1946; superseded as to Kiska by No. 8680, 14 February 1941, 6 F.R. 1014.]

c. Airspace Reservations over certain Military and Naval Reservations and Other Areas.

[Executive Order No. 7138, 12 August 1935; discontinued as to places

within the continental limits of the United States by No. 8961, 6 December 1941, 6 F.R. 6325.]

- d. **Airspace Reservation over Portions of the District of Columbia.**
 [Executive Order No. 7910, 16 June 1938, 3 F.R. 1437; superseded by No. 8378, 18 March 1940, 5 F.R. 1114; superseded by No. 8950, 26 November 1941, 6 F.R. 6101; amended by No. 9153, 30 April 1942, 7 F.R. 3275; superseded by No. 10126, 9 May 1950, 15 F.R. 2867.]
- e. **Airspace Reservation over Kodiak.**
 [Executive Order No. 8597, 18 November 1940, 5 F.R. 4559.]
- f. **Airspace Reservations over Kiska Island and Unalaska Island. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8680, 14 February 1941, 6 F.R. 1014, corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- g. **Airspace Reservation over Kaneohe Bay. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8681, 14 February 1941, 6 F.R. 1014.]
- h. **Airspace Reservations over Palmyra Island, Johnston Island, Midway Island, Wake Island and Kingman Reef. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8682, 14 February 1941, 6 F.R. 1015, corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Palmyra Island by No. 9881, 4 August 1947, 12 F.R. 5325.]
- i. **Airspace Reservations over Guam Island, Rose Island and Tutuila Island. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8683, 14 February 1941, 6 F.R. 1015, corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Rose Island and Tutuila Island by No. 10341, 8 April 1952, 17 F.R. 3143.]
- j. **Airspace Reservation over Culebra Island. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8684, 14 February 1941, 6 F.R. 1016.]
- k. **Airspace Reservation over Guantanamo Bay. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8749, 1 May 1941, 6 F.R. 2252.]
- l. **Airspace Reservations over certain Atomic Energy Commission Facilities: Clinton Engineering Works, Oak Ridge, Tennessee; Hanford Engineer Works, Richland, Washington; Los Alamos Project, Santa Fe, New Mexico.**
 [Executive Order No. 9925, 17 January 1948, 13 F.R. 251; superseded by No. 10127, 23 May 1950, 15 F.R. 3171.]
- m. **Airspace Reservation over the Superior National Forest, Minnesota.**
 [Executive Order No. 10092, 17 December 1949, 14 F.R. 7637.]

n. **Airspace Reservation over the Las Vegas Project, Las Vegas, Nevada.**

[Executive Order No. 10218, 28 February 1951, 16 F.R. 1983; superseded by No. 10633, 9 August 1955, 20 F.R. 6209.]

o. **Airspace Reservation over the Savannah River Plant of the Atomic Energy Commission.**

[Executive Order No. 10291, 25 September 1951, 16 F.R. 9843.]

C. Harbors Closed to Foreign Vessels

1. NOTE. Executive Order No. 1613 of 23 September 1912 provided that commercial, non-commercial, and public foreign vessels were prohibited from entering seven harbors without special authorization from the U.S. Navy Department. *N.W.C., I.L. Documents, 1948-49*, pp. 156-157. In 1930, Executive Order No. 5281 created airspace reservations over the same seven harbors. Presidential Proclamation 2112, of 4 January 1935, revoked executive orders 1613 and 5281 insofar as they closed the harbor of Tortugas, Florida, to sea and air navigation. Further executive orders discontinuing the airspace reservations over certain of these harbors are listed in B., Airspace Reservations. The remainder of these airspace reservations are still in effect.

Executive Order No. 1613 remains in force and it closes, in the absence of special authority, the following six harbors to sea navigation:

Great Harbor, Culebra
 Guantanamo Naval Station, Cuba
 Pearl Harbor, Hawaii
 Kiska, Aleutian Islands
 Guam
 Subic Bay, Philippine Islands

D. Maritime Control Areas

1. NOTE. All of the seventeen maritime control areas established by Presidential Proclamation during World War II were discontinued in 1945 and 1946. *N.W.C., I.L. Documents, 1948-49*, pp. 169-176. The maritime control areas generally extended beyond the limit of territorial waters for purposes of national defense and are considered to be wartime measures. There are no maritime control areas in existence at present.

E. Customs Enforcement Areas

1. NOTE. The "customs waters" of the United States, as defined in the Tariff Act of 1930, as amended, are limited to twelve miles. However, the Anti-Smuggling Act of 1935 authorizes the President to establish, under specified circumstances, customs enforcement areas extending up to sixty-two miles seaward from the coast. Five customs enforcement areas were established by Presidential Proclamation in 1935. These areas were discontinued in 1946. *N.W.C., I.L. Documents, 1948-49*, pp. 176-180. At the present time there are no customs enforcement areas in force.

SECTION III

TESTING AREAS FOR MODERN WEAPONS SYSTEMS

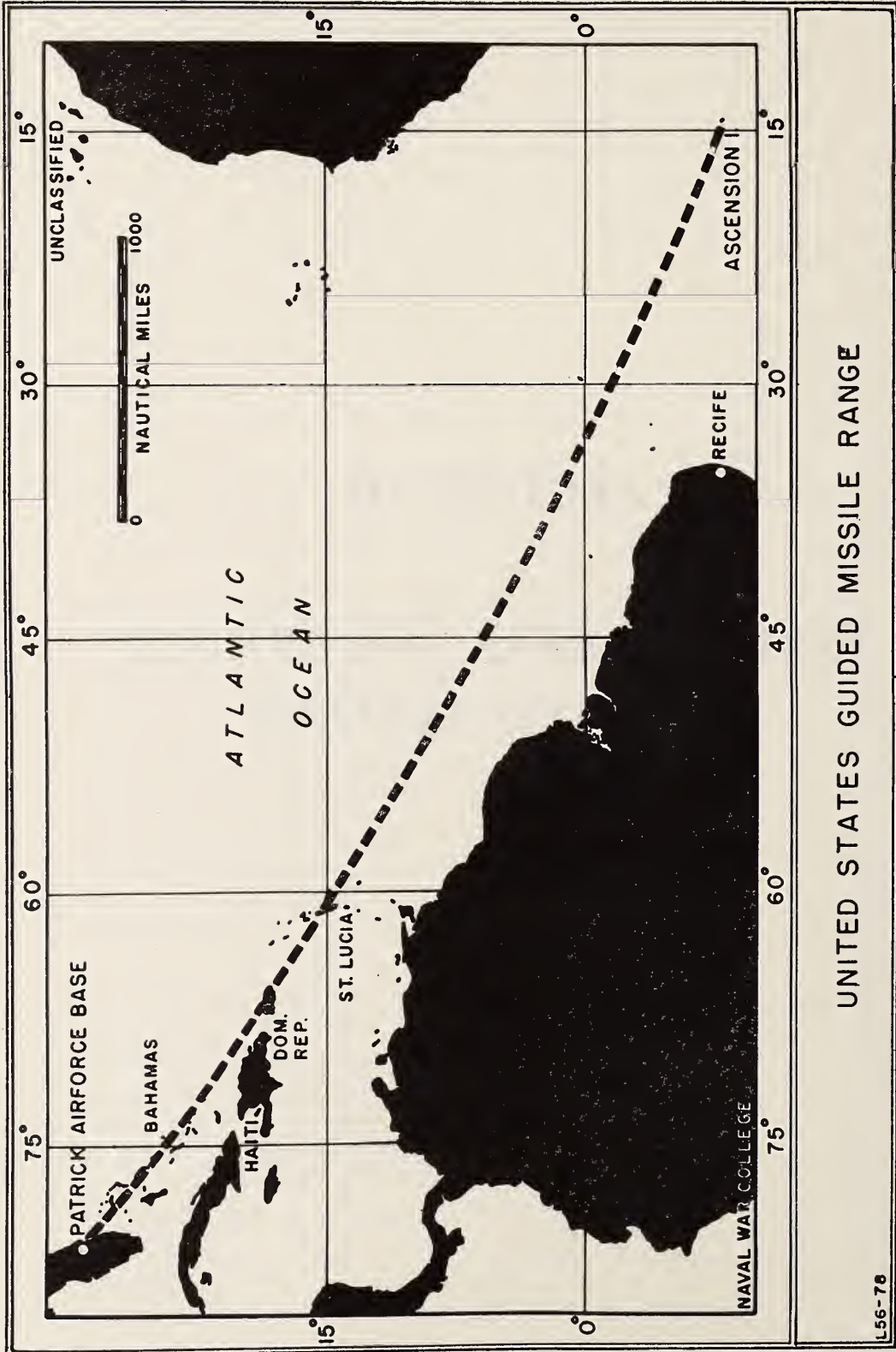


Figure 6.

SECTION III

TESTING AREAS FOR MODERN WEAPONS SYSTEMS

A. Long Range Proving Ground for Guided Missiles

1. NOTE. In the process of developing the inter-continental ballistic missile, as with the atomic and hydrogen bombs, the United States has sought the use of extensive areas necessary for the testing of these weapons. The first nuclear tests outside the continental United States were conducted at Bikini in the Pacific in July 1946. This and the subsequent larger nuclear testing areas in the Marshall Islands were designated as warning zones or danger areas by the United States during the various testing periods. See Danger Areas for Nuclear Weapons Tests, *infra*. With the long range guided missile, however, the difference in the type of weapon and tests involved necessitated the establishment of a flight range area, range sites and tracking stations within the territory of other countries in the Atlantic and over an area even greater than that covered by the Pacific nuclear experiments.

The first agreement creating a long range proving ground for guided missiles was concluded between the United Kingdom and the United States on 21 July 1950. This agreement established a flight testing area, referred to as "The Bahamas Long Range Proving Ground," extending approximately 675 miles from the launching site located at Cape Canaveral, Florida, to a point north of the Caicos Islands. *TIAS* 2099; 1 *UST* 545; 97 *UNTS* 261; *Cmd.* 8109. On 26 November 1951, arrangements were made with the Dominican Republic whereby proving ground sites and stations were set up on the northeast coast of the island. *TIAS* 2425; 3 *UST* 2569; 150 *UNTS* 227. Similar sites and posts were established in Puerto Rico at about the same time. By a second agreement between the United Kingdom and the United States on 15 January 1952 the Bahamas Long Range Proving Ground was extended to the Turks and Caicos Islands. *TIAS* 2426; 3 *UST* 2594; 127 *UNTS* 3; *Cmd.* 8485. In 1952, a treaty with Haiti provided for the temporary establishment of a Short-Range-Aid-to-Navigation (SHORAN) Ground Station for the tracking of guided missiles on Haitian territory. *TIAS* 2701; 3 *UST* 5105. As of 31 October 1956, the Treaty is no longer in force. *Treaties in Force*, Publication 6427, page 68. With a view toward developing counter-measures against guided missiles, a High Altitude Interceptor Range was created in certain areas north and south of Grand Bahamas Island by an agreement with the United Kingdom in 1953. *TIAS* 2789; 4 *UST* 429; *Cmd.* 8881. Recently two separate agreements between the United Kingdom and the United States have further extended the Long Range Proving Ground out into the Atlantic to Saint Lucia in the Windward Islands (*TIAS* 3595) and to Ascension Island (*TIAS* 3603). These agreements entered into force on 25 June 1956, and increased the guided missile range from 1000 miles to 5000 miles. By an Exchange of Notes, effective 21 January 1957, Brazil agreed to

the establishment of a guided missile station on the Brazilian Island of Fernando de Noronha (*TIAS* 3744). Effective 1 April 1957, the United Kingdom agreed to extend the Flight Testing Range to include an additional area to the southeast, as shown on map annexed to the Agreement (*TIAS* 3803).

So far as could be determined, there have been no objections or protests made by other nations against the establishment or operation of the long range proving ground, and there have been no reported incidents involving foreign vessels or aircraft. Although the long range proving ground extends over areas that include some of the air and shipping routes in the Caribbean and Atlantic, it is believed that the missile flights are at such high altitudes that they do not interfere with air or sea navigation. Moreover, every effort is made by the authorities responsible for testing to make sure that the range area is clear before any missiles are launched. In addition, the testing areas are announced in the United States Radio Facilities Charts, *Notices to Airmen* and *Notices to Mariners* well in advance of any tests.

The 1950 agreement establishing the Bahamas Long Range Proving Ground, reproduced below, is similar to the numerous succeeding agreements and extensions of the proving grounds which have been entered into by the United States. Paragraph 3 of Article XI of this original agreement was amended by an exchange of notes in 1955. *TIAS* 3379; *Cmd.* 9565. The Amendment provided that "certain facilities at the Sites at Governor's Harbour (Eleuthera), Mayaguana, and San Salvador shall be open for regular use by civil aircraft" in accordance with certain provisions and regulations. A similar Amendment, providing for extension of civil air services to the Turks and Caicos Islands and Jamaica, became effective 4 January 1957 (*TIAS* 3727).

2. Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning a Long Range Proving Ground for Guided Missiles to be Known as "The Bahamas Long Range Proving Ground" (1950)

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, with the concurrence of the Government of the Bahama Islands,

Considering that it is the intention of the Government of the United States of America to establish a Long Range Proving Ground consisting of a Main Base and Launching Area which shall be in the vicinity of Cape Canaveral, Florida, United States of America, and of a Flight Testing Range, as defined in this Agreement, which shall extend to the south-east from the Launching Area through the Bahama Islands and the waters adjacent thereto,

Having decided that the said Proving Ground should be used by the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for testing the flight of guided missiles and associated

equipment and for training with such missiles and equipment, and

Desiring that this Agreement shall be fulfilled in a spirit of good neighborliness between the Governments concerned, and that details of its practical application shall be arranged by friendly cooperation,

Have agreed as follows:

ARTICLE I DEFINITIONS

For the purposes of this Agreement:

(1) "Range Area" means that part of the Flight Testing Range which lies within the territory of the Bahama Islands (including the territorial waters thereof).

(2) "United States authorities" means the authority or authorities from time to time authorized or designated, by the Government of the United States of America, for the purpose of exercising the powers in relation to which the expression is used.

(3) "United States Forces" means the armed forces of the United States of America, and "member of the United States Forces" means a member of those forces who is entitled to wear the uniform thereof.

(4) "Flight Testing Range" means the area within the red and hatched line drawn on the attached map. [Map not reprinted.]

(5) "National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes allegiance to the United States.

(6) "British national" means any British subject or Commonwealth person or any British protected person, but shall not include a person who is both a British national and a member of the United States Forces.

(7) "Local alien" means a person, not being a British national, a member of the United States Forces or a national of the United States, who is ordinarily resident in the Bahama Islands.

(8) "Sites" means the sites provided under Article IV of this Agreement so long as they are so provided.

ARTICLE II GENERAL DESCRIPTION OF RIGHTS

(1) Subject to the provisions of this Article, the Government of the United States of America shall have the right in the Range Area:

- (a) to launch, fly and land guided missiles;
- (b) to establish, maintain and use an instrumentation and a

communications system including radar, radio, land lines and submarine cables for operational purposes in connection with the Flight Testing Range;

(c) to operate such vessels and aircraft as may be necessary for purposes connected directly with the operation of the Flight Testing Range.

(2) No wireless station, submarine cable, land line or other installation shall be established within the Range Area except at such place or places as may be agreed between the Contracting Governments, provided that such agreement shall not be required in respect of any wireless station, submarine cable, land line or other installation to be established within a Site.

(3) No wireless station shall be established or used in the Range Area otherwise than for the purpose of operating the Flight Testing Range.

(4) When submarine cables established in accordance with paragraph (1) of this Article are no longer required for the purposes of this Agreement, their disposal or further use shall be subject to consultation between the Contracting Governments and, in the absence of agreement, they shall be removed by and at the expense of the Government of the United States of America.

(5) The use of radio frequencies, powers and band widths, for radio services (including radar), under any of the provisions of this Agreement, shall be subject to the prior concurrence of the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground.

(6) The Contracting Governments shall, in consultation with the Government of the Bahama Islands, take all reasonable precautions against possible danger and damage resulting from operations under this Agreement in the Flight Testing Range.

(7) The rights granted to the Government of the United States of America by this Article shall not be exercised unreasonably or so as to interfere with or to prejudice the safety of navigation, aviation or communication within the Flight Testing Range and the rights so granted shall be exercised in the spirit of the last paragraph of the Preamble.

ARTICLE III RIGHTS OF WAY

The Government of the United Kingdom of Great Britain and Northern Ireland shall, after consultation with the Government of the Bahama Islands, provide to the Government of the United States of America such rights of way as may be agreed to be necessary for the operation of the Flight Testing Range.

ARTICLE IV

PROVISION OF SITES

(1) The Government of the United Kingdom shall, after consultation with the Government of the Bahama Islands, provide so long as this Agreement remains in force such Sites for the purpose of the operation of the Flight Testing Range as may be agreed between the Contracting Governments to be necessary for that purpose. When it is agreed between the Contracting Governments that any Site provided under this Article is no longer necessary for the purpose of the operation of the Flight Testing Range, the Government of the United Kingdom shall be entitled to cease to provide the Site for that purpose.

(2) Access to the Sites shall not be permitted to persons not officially connected with the Bahamas Long Range Proving Ground except with the consent of the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground and the Senior Member of the United States Armed Forces detailed to the said Proving Ground.

ARTICLE V

JURISDICTION

(1) The Government of the United States of America shall have the right to exercise the following jurisdiction over offenses committed in the Bahama Islands:

(a) Where the accused is a member of the United States Forces,

(i) if a state of war exists, exclusive jurisdiction over all offenses wherever committed;

(ii) if a state of war does not exist, exclusive jurisdiction over security offenses wherever committed and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(b) Where the accused is a British national or a local alien and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites.

(c) Where the accused is not a member of the United States Forces, a British national or a local alien, but is a person subject to United States military or naval law,

(i) if a state of war exists, exclusive jurisdiction over security offenses committed inside the Sites and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed;

(ii) if a state of war does not exist and there is no civil

court of the United States sitting in the Bahama Islands, exclusive jurisdiction over security offenses which are not punishable under the law of the Bahama Islands; concurrent jurisdiction over all other offenses committed inside the Sites;

(iii) if a state of war does not exist and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(d) Where the accused is not a member of the United States Forces, a British national or a local alien, and is not a person subject to United States military or naval law, and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses committed inside the Sites and, if a state of war exists, over security offenses committed outside the Sites.

(2) Wherever, under paragraph (1) of this Article, the Government of the United States of America has the right to exercise exclusive jurisdiction over security offenses committed inside the Sites, such right shall extend to security offenses committed outside the Sites which are not punishable under the law of the Bahama Islands.

(3) In every case in which under this Article the Government of the United States of America has the right to exercise jurisdiction and the accused is a British national, a local alien or, being neither a British national nor a local alien, is not a person subject to United States military or naval law, such jurisdiction shall be exercisable only by a civil court of the United States sitting in the Bahama Islands.

(4) In every case in which under this Article the Government of the United States of America has the right to exercise exclusive jurisdiction, the following provisions shall have effect:

(a) The United States authorities shall inform the Government of the Bahama Islands as soon as is practicable whether or not they elect to exercise such jurisdiction over any alleged offenses which may be brought to their attention by the competent authorities of the Bahama Islands or in any other case in which the United States authorities are requested by the competent authorities of the Bahama Islands to furnish such information.

(b) If the United States authorities elect to exercise such jurisdiction, the accused shall be brought to trial accordingly, and the courts of the Bahama Islands shall not exercise jurisdiction except in aid of a court or authority of the United States, as required or permitted by the law of the Bahama Islands.

(c) If the United States authorities elect not to exercise such jurisdiction, and if it shall be agreed between the Government of the Bahama Islands and the United States authorities that the alleged offender shall be brought to trial, nothing in this Article shall affect the exercise of jurisdiction by the courts of the Bahama Islands in the case.

(5) In every case in which under this Article the Government of the United States of America has the right to exercise concurrent jurisdiction, the following provisions shall have effect:

(a) The case shall be tried by such court as may be arranged between the Government of the Bahama Islands and the United States authorities.

(b) Where an offense is within the jurisdiction of a civil court of the Bahama Islands and of a United States military or naval court, conviction or acquittal of the accused by one such court shall not exclude subsequent trial by the other, but in the event of such subsequent trial the court in awarding punishment shall have regard to any punishment awarded in the previous proceedings.

(c) Where the offense is within the jurisdiction of a civil court of the Bahama Islands and of a civil court of the United States, trial by one shall exclude trial by the other.

(6) Notwithstanding anything contained elsewhere in this Article, when a state of war exists in which the Government of the United Kingdom is, and the Government of the United States of America is not, engaged, then in any case in which the Government of the United States of America would, but for this paragraph, have exclusive jurisdiction, that jurisdiction shall be concurrent in respect of any of the following offenses against any part of His Majesty's dominions committed outside the Sites or, if not punishable by the Government of the United States of America in the Bahama Islands, inside the Sites:

(a) treason;

(b) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(c) any other offense relating to operations in the Bahama Islands of the Government of any part of His Majesty's dominions, or to the safety of His Majesty's naval, military or air bases or establishments or any part thereof or of any equipment or other property of any such Government in the Bahama Islands.

(7) Nothing in this Article shall give the Government of the United States of America the right to exercise jurisdiction over a member of a United Kingdom, Dominion or Colonial armed force, except that, if a civil court of the United States is sitting in the

Bahama Islands and a state of war does not exist, or a state of war exists in which the Government of the United States of America is, and the Government of the United Kingdom is not, engaged, the Government of the United States of America shall have the right, where the accused is a member of any such force, to exercise concurrent jurisdiction over security offenses committed inside the Sites.

(8) Nothing in this Article shall affect the jurisdiction of a civil court of the Bahama Islands except as expressly provided in this Article.

(9) In this Article the following expressions shall have the meanings hereby assigned to them:

(a) "Security offense" means any of the following offenses against the Government of the United States of America and punishable under the law of the United States of America:

(i) treason;

(ii) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(iii) any other offense relating to operations, in the Bahama Islands, of the Government of the United States of America, or to the safety of any equipment or other property of the Government of the United States of America in the Bahama Islands.

(b) "State of war" means a state of actual hostilities in which either the Government of the United States of America or the Government of the United Kingdom is engaged and which has not been formally terminated, as by surrender.

(c) "United States interest offense" means an offense which (excluding the general interest of the Government of the Bahama Islands in the maintenance of law and order therein) is solely against the interests of the Government of the United States of America or against any person (not being a British national or local alien) or property (not being property of a British national or local alien) present in the Bahama Islands by reason only of service or employment in connection with the construction, maintenance, operation or defense of the Flight Testing Range.

ARTICLE VI

SECURITY LEGISLATION

The Government of the Bahama Islands will take such steps as may from time to time be agreed to be necessary with a view to the enactment of legislation to ensure the adequate security and protection of the Sites and United States equipment and other property, and the operations of the United States under this Agreement and the punishment of persons who may contravene any laws

or regulations made for that purpose. The Government of the Bahama Islands will also from time to time consult with the United States authorities in order that the laws and regulations of the United States of America and of the Bahama Islands in relation to such matters may, so far as circumstances permit, be similar in character.

ARTICLE VII

ARREST AND SERVICE OF PROCESS

(1) No arrest of a person who is a member of the United States Forces or who is a national of the United States subject to United States military law shall be made and no process, civil or criminal, shall be served on any such person within any Site except with the permission of the Commanding Officer in charge of the United States Forces in such Site; but should the Commanding Officer refuse to grant such permission he shall (except where, under Article V, jurisdiction is to be exercised by the United States or is not exercisable by the courts of the Bahama Islands) forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authority of the Bahama Islands or to serve such process, as the case may be, and to provide for the attendance of the server of such process before the appropriate court of the Bahama Islands or procure such server to make the necessary affidavit or declaration to prove such service.

(2) In cases where the courts of the United States have jurisdiction under Article V, the Government of the Bahama Islands will on request give reciprocal facilities as regards the service of process and the arrest and surrender of persons charged.

(3) In this Article the expression "process" includes any process by way of summons, subpoena, warrant, writ or other judicial document for securing the attendance of a witness, or for the production of any documents or exhibits, required in any proceedings, civil or criminal.

ARTICLE VIII

RIGHT OF AUDIENCE FOR UNITED STATES COUNSEL

In cases in which a member of the United States Forces shall be a party to civil or criminal proceedings in any court of the Bahama Islands by reason of some alleged act or omission arising out of or in the course of his official duty, United States counsel (authorized to practice before the courts of the United States) shall have the right of audience, provided that such counsel is in the service of the Government of the United States of America

and appointed for that purpose either generally or specially by the appropriate authority.

ARTICLE IX

SURRENDER OF PERSONS CHARGED

Where a person charged with an offense which falls to be dealt with by the courts of the Bahama Islands is in a Site, or a person charged with an offense which falls under Article V to be dealt with by courts of the United States is in the Bahama Islands but outside the Sites, such person shall be surrendered to the Government of the Bahama Islands, or to the United States authorities, as the case may be, in accordance with special arrangements made between the Government and those authorities.

ARTICLE X

PUBLIC SERVICES

The Government of the United States of America shall have the right to employ and use all utilities, services and facilities, harbours, roads, highways, bridges, viaducts, canals and similar channels of transportation belonging to or controlled or regulated by the Government of the Bahama Islands or the Government of the United Kingdom on such conditions as shall be agreed between the Contracting Governments.

ARTICLE XI

SHIPPING AND AVIATION

(1) The Government of the United States of America may place or establish in the Sites and the territorial waters adjacent thereto, or in the vicinity thereof, lights and other aids to navigation of vessels and aircraft necessary for the operation of the Flight Testing Range. Such lights and other aids shall conform to the system in use in the Bahama Islands. The position, characteristics and any alterations thereof shall be determined in consultation with the appropriate authority in the Bahama Islands and the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground.

(2) United States public vessels operated by the Army, Navy, Air Force, Coast Guard or the Coast and Geodetic Survey bound to or departing from a Site shall not be subject to compulsory pilotage in the Bahama Islands. If a pilot is taken pilotage shall be paid for at appropriate rates. Such United States public vessels shall have such exemption from light and harbor dues in the Bahama Islands as shall be agreed between the Contracting Governments.

(3) Commercial aircraft shall not be authorized to operate from any of the Sites (save in case of emergency or for strictly military purposes under supervision of the Army, Navy or Air Force Departments) except by agreement between the Government of the United States of America and the Government of the United Kingdom.

ARTICLE XII

IMMIGRATION

(1) The immigration laws of the Bahama Islands shall not operate or apply so as to prevent admission into the Bahama Islands, for the purposes of this Agreement, of any member of the United States Forces posted to a Site or any person (not being a national of a Power at war with His Majesty The King) employed by, or under a contract with, the Government of the United States of America in connection with the establishment, maintenance, or use of the Flight Testing Range; but suitable arrangements shall be made by the United States to enable such persons to be readily identified and their status to be established.

(2) If the status of any person within the Bahama Islands and admitted thereto under the foregoing paragraph shall be altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Government of the Bahama Islands and shall, if such person be required to leave the Bahama Islands by that Government, be responsible for providing him with a passage from the Bahama Islands within a reasonable time, and shall in the meantime prevent his becoming a public responsibility of the Bahama Islands.

ARTICLE XIII

MOTOR VEHICLE TAXES

No tax or fee shall be payable in respect of registration or licensing for use in the Bahama Islands of motor vehicles belonging to the Government of the United States of America and used for purposes connected directly with the establishment, maintenance or use of the Flight Testing Range.

ARTICLE XIV

CUSTOMS DUTIES AND OTHER TAXES ON GOODS

(1) No import, excise, consumption or other tax, duty or impost shall be charged on:

(a) material, equipment, supplies or goods for use in the establishment, maintenance, or use of the Flight Testing Range

consigned to, or destined for, the United States authorities or a contractor;

(b) goods for use or consumption aboard United States public vessels or aircraft of the Army, Navy, Air Force, Coast Guard or Coast and Geodetic Survey;

(c) goods consigned to the United States authorities for the use of institutions under Government control known as Post Exchanges, Ships' Service Stores, Commissary Stores or Service Clubs, or for sale thereat to members of the United States Forces, or civilian employees of the United States being nationals of the United States and employed in connection with the Flight Testing Range, or members of their families resident with them and not engaged in any business or occupation in the Bahama Islands;

(d) the personal belongings or household effects of persons referred to in sub-paragraph (c) of this Article and of contractors and their employees being nationals of the United States employed in the establishment, maintenance, or use of the Flight Testing Range and present in the Bahama Islands by reason only of such employment.

(2) No export tax shall be charged on the material equipment, supplies or goods mentioned in paragraph (1) in the event of re-shipment from the Bahama Islands.

(3) This Article shall apply notwithstanding that the material, equipment, supplies or goods pass through other parts of the Bahama Islands enroute to or from a Site.

(4) Administrative measures shall be taken by the United States authorities to prevent the resale of goods which are sold under paragraph (1) (c), or imported under paragraph (1) (d) of this Article, to persons not entitled to buy goods at such Post Exchanges, Ships' Service Stores, Commissary Stores or Service Clubs, or not entitled to free importation under the said paragraph (1) (d); and generally to prevent abuse of the customs privileges granted under this Article. There shall be cooperation between such authorities and the Government of the Bahama Islands to this end.

(5) The understanding with respect to paragraph (1) (d) of Article XIV of the Agreement for the Use and Operation of Certain Bases, signed March 27, 1941¹ embodied in the notes exchanged by the Contracting Governments at Washington on January 18, 1946 and February 21, 1946, the texts of which are annexed hereto,² is hereby made applicable to this Article.

¹ Executive Agreement Series 235; 55 Stat. 1560. [Not reprinted herein.]

² *Post*, p. 17; printed also as Treaties and Other International Acts Series 1592; 61 Stat., Pt. 3, p. 2637. [Not reprinted herein.]

ARTICLE XV

TAXATION

(1) No member of the United States Forces or national of the United States, serving or employed in the Bahama Islands in connection with the establishment, maintenance or use of the Flight Testing Range, and residing in the Bahama Islands by reason only of such employment, or his wife or minor children, shall be liable to pay income tax in the Bahama Islands except in respect of income derived from the Bahama Islands.

(2) No such person shall be liable to pay in the Bahama Islands any poll tax or similar tax on his person, or any tax on ownership or use of property which is within a Site, or situated outside the Bahama Islands.

(3) No person ordinarily resident in the United States shall be liable to pay income tax in the Bahama Islands in respect of any profits derived under a contract made in the United States with the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range, or any tax in the nature of a license in respect of any service or work for the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range.

ARTICLE XVI

POSTAL FACILITIES

The Government of the United States of America shall have the right to establish United States Military Post Offices in the Sites for the exclusive use of the United States Forces, and civilian personnel (including contractors and their employees) who are nationals of the United States and employed in connection with the establishment, maintenance or use of the Flight Testing Range and the families of such persons, for domestic use between United States Military Post Offices in the Sites and between such Post Offices and other United States Post Offices and Post Offices in the Panama Canal Zone and the Philippine Islands.

ARTICLE XVII

HEALTH MEASURES IN THE VICINITY OF THE SITES

The Government of the United States of America shall have the right, in collaboration with the Government of the Bahama Islands, and, where necessary, with the local authority concerned, to exercise, without other consideration than adequate and effective compensation to be paid by the Government of the United

States of America to private owners or occupiers, if any, such powers as such Government and local authority may possess of entering upon any property in the vicinity of the Sites for the purpose of inspection, and of taking any necessary measures to improve sanitation and protect health.

ARTICLE XVIII

REMOVAL OF PROPERTY

(1) The title to any property placed on the Sites (including property affixed to the realty) and provided by the Government of the United States of America for the purposes of this Agreement, shall remain in the Government of the United States of America.

(2) At any time before the termination of this Agreement or within a reasonable time thereafter, such property may, at the discretion of the Government of the United States of America be

(a) relocated within the Sites, or

(b) removed therefrom, or

(c) disposed of while on a Site on the condition (unless otherwise agreed between the Government of the Bahama Islands and the United States authorities) that it shall forthwith be removed therefrom.

(3) Any ground from which such property is so removed, shall be restored, as far as possible, to its present condition by the Government of the United States of America.

(4) The Government of the United States of America will not, in the Bahama Islands, dispose of any such property

(a) without the consent of the Government of the Bahama Islands, or

(b) without offering the property for sale to that Government, if such offer is consistent with laws of the United States of America then in effect, or

(c) before the expiration of such period, not being less than 120 days after the date of such offer, as may be reasonable in the circumstances.

(5) Such property may be exported by the United States authorities free from any license, export tax, duty, or impost.

(6) Any such property not removed or disposed of as aforesaid within a reasonable time after the termination of this Agreement, shall become the property of the Government of the Bahama Islands.

ARTICLE XIX

RIGHTS TO BE RESTRICTED TO THE PURPOSES OF THE AGREEMENT

The Government of the United States of America shall not

exercise any rights granted by this Agreement, or permit the exercise thereof, except for the purposes specified in this Agreement.

ARTICLE XX

RIGHTS NOT TO BE ASSIGNED

The Government of the United States of America shall not assign or part with any of the rights granted by this Agreement.

ARTICLE XXI

LIAISON

The Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground and the Senior Member of the United States Armed Forces detailed to the said Proving Ground shall jointly decide the details of the execution of this Agreement in its application to specific situations, in the best interests of all concerned. The said Senior Member of the British Armed Forces shall be responsible for undertaking negotiations with the Government of the Bahama Islands in this connection.

ARTICLE XXII

CLAIMS FOR COMPENSATION

(1) The Government of the United States of America undertakes to pay adequate and effective compensation, which shall not be less than the sum payable under the laws of the Bahama Islands, and to indemnify the Governments of the United Kingdom and of the Bahama Islands and all other authorities, corporations and persons in respect of valid claims arising out of:

(a) the death or injury of any person, except persons employed by the Government of the United Kingdom in connection with the Bahamas Long Range Proving Ground, resulting from the establishment, maintenance or use by the Government of the United States of America of the Flight Testing Range;

(b) damage to property resulting from any action of the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range;

(c) the acquisition of private property, or of rights affecting private property, to enable the Sites, or any rights of the Government of the United States of America under this Agreement, to be provided.

(2) Compensation payable under sub-paragraph (1)(c) of this Article shall be assessed in accordance with the laws of the Bahama Islands.

(3) For the purposes of this Article the laws of the Bahama Islands shall be the laws in force at the time of the signature of this Agreement, provided that any subsequent alteration of the said laws shall have effect if the Contracting Governments so agree.

ARTICLE XXIII

FREEDOM FROM RENTS AND CHARGES

Except as provided in Articles XVII and XXII the Sites shall be provided, and the rights of the Government of the United States of America under this Agreement shall be made available, free from all rent and charges to the Government of the United States of America.

ARTICLE XXIV

MODIFICATION OF THE AGREEMENT

Modification of this Agreement shall be considered by the Contracting Governments in the light of any modification of the Agreement between the Governments of the United States of America and the United Kingdom relating to the Bases leased to the United States of America dated the 27th March, 1941, which may be made under Article XXVIII of that Agreement.

ARTICLE XXV

IMPLEMENTATION OF THE AGREEMENT

(1) The Government of the United States of America and the Government of the Bahama Islands respectively will do all in their power to assist each other in giving full effect to the provisions of this Agreement according to its tenor and will take all appropriate steps to that end.

(2) During the period for which this Agreement remains in force, no laws of the Bahama Islands which would derogate from or prejudice any of the rights conferred on the Government of the United States of America by this Agreement shall be applicable within the Range Area, save with the concurrence of the Government of the United States.

ARTICLE XXVI

FINAL PROVISIONS

This Agreement shall come into force on the date of signature and shall continue in force for a period of twenty-five years and thereafter until one year from the day on which either Contracting Government shall give notice to the other of its intention to terminate the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Washington this 21st day of July, 1950.

[Signatures omitted.]

[Annex and attached map not reproduced.]

B. Danger Areas for Nuclear Weapons Tests

1. NOTE. Since 1946, several nuclear bomb test series have been conducted in the Pacific by the United States. The legal problems involved in establishing danger areas, which extend over large portions of the high seas, for these experiments, have caused considerable comment among some writers in the field of international law. McDougal and Schlei have argued persuasively that the tests are lawful and reasonable measures for national security in an article, "The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security," 64 *Yale Law Journal* (1955), pp. 648-710. A condensed version by McDougal will be found in 49 *AJIL* 356 (1955). For an opposing view, see Margolis, "The Hydrogen Bomb Experiments and International Law," 64 *Yale Law Journal* (1955), pp. 629-647.

The nuclear testing areas in question have been established as danger areas, warning all vessels and aircraft to stay clear, but not prohibiting them from entering the hazard area. The danger areas have been promulgated internationally by the Notices to Mariners, which are published by the U.S. Navy Hydrographic Office under the authority of the Secretary of the Navy in accordance with Title 5 of the United States Code, Section 457.

The announcements as published in Notices to Mariners concerning all the tests in the Pacific have been essentially the same, except for the size of the area included in the danger zone. The excerpts reprinted below are taken from the Notices to Mariners, and relate to the latest hydrogen bomb test series conducted in the Pacific in May 1956.

2. Closed Areas Effective January 7, 1956

(29) NORTH PACIFIC OCEAN—Marshall Islands—Eniwetok and Bikini Atolls—Closed areas.—The following are closed areas and all vessels and aircraft are prohibited from entrance without specific clearance:

(a) The area of Eniwetok Atoll including the land areas of the atoll and the water areas of the lagoon within three (3) miles to the seaward side of the periphery of the land areas.

(b) The area of Bikini Atoll including the land areas of the atoll, the water areas of the lagoon and adjacent ocean waters within three (3) miles to the seaward side of the periphery of the land areas.

(N.M. 1, Jan. 7, 1956)

3. Danger Area Effective April 20, 1956.

*(1298) NORTH PACIFIC OCEAN—Marshall Islands—Eniwetok and Bikini Atolls—Danger Area—Information.—Effective April 20, 1956, a danger area, dangerous to all ships, aircraft and personnel entering its limits, is established. The danger area is bounded by a line joining the following positions:

- (a) 18° 30' N., 158° 00' E.
- (b) 18° 30' N., 172° 00' E.
- (c) 11° 30' N., 172° 00' E.
- (d) 11° 30' N., 166° 16' E.
- (e) 10° 15' N., 166° 16' E.
- (f) 10° 15' N., 158° 00' E.

Grave hazards, as a consequence of tests of military weapons, will exist in the area and all mariners and airmen are cautioned to keep clear.

All possible precautions will be taken to insure against the incidence of injuries to human life or to property within the area. It is not anticipated that there will be any such hazards outside the area. In the unlikely event that these test activities create such hazards outside the area, appropriate warning will be given.

(N.M. 11, Mar. 17, 1956)

(H.O. Doc. A5, Mar. 5, 1956)

H.O. Charts 5413, 5415, 5203, 0528, 5950, 5800, 5799, 5590.

H.O. Pub. 165A, 1952, page 247.

This same notice is repeated in Notices to Mariners Nos. 12–15 of 1956.

4. Discontinuance, August 25, 1956, of Danger Area

(4070) NORTH PACIFIC OCEAN—Marshall Islands—Eniwetok and Bikini Atolls—Danger area discontinued—Closed areas remain in effect.—1. The danger area, bounded by a line joining the following positions, has been discontinued:

- (a) 18° 30' N., 158° 00' E.
- (b) 18° 30' N., 172° 00' E.
- (c) 11° 30' N., 172° 00' E.
- (d) 11° 30' N., 166° 16' E.
- (e) 10° 15' N., 166° 16' E.
- (f) 10° 15' N., 158° 00' E.

(Supersedes N.M. 12 (1416) and 11 (1298) of 1956.)

* Indicates Notice to Mariners based on original information.

2. The closed areas around Eniwetok and Bikini Atolls remain in effect.

(See N.M. 1 (29) of 1956.)

(N.M. 34, Aug. 25, 1956.)

(Hydrolant 1252.)

H.O. Charts 5413, 5415, 5203, 0528, 5950, 5800, 5799, 5590.

H.O. Pub. 165A, 1952, page 247.

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